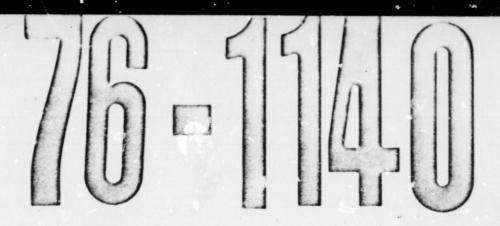
United States Court of Appeals for the Second Circuit



APPENDIX



IN THE
UNITED STATES COURT OF APPEALS

F R THE SECOND CIRCUIT

B

DOCKET NO. 76-1140

UNITED STATES OF AMERICA
PLAINTIFF-APPELLEE

V.

DAVID N. BUBAR, ET AL.



DEFENDANT-APPELLANT

JOINT APPENDIX TO BRIEF

PART TWO OF FOUR

PAGINATION AS IN ORIGINAL COPY

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA

vs.

: Criminal N-75-59

CHARLES D. MOELLER, ET AL, :

New Haven, Connecticut January 14, 1976

BEFORE:

Hon. JON O. NEWMAN, U.S.D.J.

JURY CHARGE

SANDERS, GALE & RUSSELL
CERTIFIED STENOTYPE REPORTERS

(In the absence of the jury.)

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THE COURT: Have counsel seen the redacted variation of the indictment?

MR. EXICUITE: I have not. It's just been furnished. Truthfully I have not looked at it.

MR. DORSEY: All we did was redo the first and I think it's the fourth page but we made & brand new copy of the entire indictment as corrected and described. I think you have the first and the fourth — the originals of the first and fourth pages to be incorporated in your copy of the originals.

THE COURT: The Clerk is filing those.

MR. ERICHITZ: In view of the statement made by the U.S. Marshal, may I ask the indulgence of the Court for just about five minutes.

There is a very important paper and document which I thought I had in my hand as I left the car and I need it here to follow the Judge's charge. I'm asking for that indulgance, sir. Reverend Bubar will be out of the courtroom five minutes, sir. May I?

THE COURT: You'll have to be more specific.

I can't imagine why you need a piece of paper in your hand
while I give a --

MR. ZALOWITI: I shall reply specifically.

The document was the charges which I submitted to the Court and

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the charges that were submitted by the U.S. Attorney Dorsey.
That is the paper or papers, sir.

THE COURT: Your own request to charge?

MR. ZALOWITZ: Yes, sir.

THE COURT: I will give you a copy of that.

MR. ZALOWITZ: Thank you. That is all I ask.

May I also have a copy of the U.S. Attorney's request to charge? That's all I ask, nothing more. Thank you, sir.

THE COURT: You have everything you need?
HR. ZALOWITZ: Yes.

(Jury present.)

I think I'm going to start by excusing the two alternates wince we now know we have a jury of 12 assembled on a day when the case vill be submitted to the jury.

be involved in a long trial and yet not participate in the final stages. Hevertheless, you have been of much help by your faithful attendance a 1 attention as you have given us a guarantee we would have a jury of 12 and, as you know, two of the alternates were needed to become members of the jury and you assured us we would have a jury of 12.

we are grateful to you for your attendance and your attention. I would suggest to you that the oath you originally took with all of the jurors about not discussing the

case, except in open Court, is still a good admonition. It sometimes happens in some cases that people are curious as to what you might be thinking and I suggest that probably good advice is to just keep your own counsel in these matters but I will excuse the two alternates now. You are discharged from all further connection with this case. Thank you very much.

MR. ZALOWING: May I have a side bar?

THE COURT: Now, ladies and gentlemen, as all counsel have observed in the arguments this has been a long trial. You began to hear testimony I think just short of three months ago on October 16th and by my count you have heard 182 witnesses --

HR. KOSKOFF: Your Honor, I cannot hear you.
THE COURT: I will speak up.

You heard about 182 witnesses, some more than

once.

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As inevitably happens in a long trial certain things occur that may paghaps be of somewhat distracting nature.

There may have been a few moments of humor, a few months perhaps of boredom, a few moments of irritation.

what I am going to ask you to do now is just put those aspects of the trial to one side. It is inevitable in the long-run. We are coming now to the point where you have to form your various functions and so the side aspects, whatever irritations there may have been, times when you were kept waiting,

all those things have to put aside so that your attention can be focused solely on the important task that is before you.

will be somewhat lengthy. I urge you to consider them as an entirety. Don't take any one phrase or any one sentence to the exclusion of the others. Listen to it all and as you apply these rules of law to the facts, do so as an entirety. The entire charge should be generally in your mind.

Now, since it's a long charge it may be that after you have retired for deliberation you may not be certain in your mind exactly what I did do about a certain issue in the case. If you wish to return to Court to have some part of the charge reread, to have some point of law clarify dor perhaps to have some part of the testimony reread, just submit a written note to me so that I will know exactly what it is you are inquiring about and I will endeavor to comply.

You heard all the evidence in the case. You have heard the summations of counsel. How it is my function to tell you the rules of law that are to govern your deliberations in this case.

It is exclusively the function of the Court to set forth the rules of law and the instructions as to their application. On these legal matters you must take the law as I give it to your you are not at liberty to do otherwise.

On the other hand, you, the members of the jury, are the sole and exclusive judges of the facts of the case.

It is your duty to find the facts. It is your duty to recollect and weigh the testimony and draw your own conclusions as towhat the facts are, but you may not go outside the evidence to find the facts; you may not resort to guesswork, conjecture or suspicion.

The government in this case must be considered no different light than any other party to a lawsuit. Counsel for the government must be considered in no different light than counsel for any defendant. The fact that the government is a party entitles it to no greater consideration or less consideration than that accorded to any other party to the litigation.

objections by counsel for the government or for one or more defendants, that fact should have no bearing on your consideration of the case.

Counsel for both sides have their responsibilities to be sure that the rules of evidence are enforced and no adverse inference should be drawn against any counsel and certainly not against any party because counsel made any objection.

As was mentioned yesterday the summations and arguments of counsel are not evidence. The evidence is what you heard from the witnesses and the exhibits you have with you in the jury room.

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If in the course of the trial I indicated to you that a particular bit of testimony should be stricken or disregarded, you must disregard that testimony and not permit it to enter into any of your considerations in this case.

In general there are two types of evidence which you may consider. One is direct evidence, such as the testimony of an eyevitness. The other is circumstantial evidence—the proof of a chain of circumstances from which some other fact may be inferred.

circumstantial evidence may be received and is entitled to such consideration as you may find it deserved depending upon the inferences you think it necessary and reasonable to draw from such evidence. No greater degree of cortainty is required when the evidence is circumstantial than when it is direct, for in either case you must be convinced beyond a reasonable doubt before there could be a conviction of any defendant on any count. Circumstantial evidence consists of facts proved from which the jury may infer by a process of reasoning other facts ought to be established as true.

How, different inferences may be drawn from facts in a case, whether proved by direct or circumstantial evidence. The prosectuion may ask you to draw one set of inferences while a defendant may ask you to draw another set of inferences. It is for you to decide which common sense inferences you choose to draw from the proven facts. If all the

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circumstances taken together are consistent with any reasonable hypothesis which includes the innocence of a defendant, the government has not proved his guilt beyond a reasonable doubt and you must acquit him. On the other hand, if you find that all of the circumstances established by the evidence in a particular case, taken together, satisfy you beyond a reasonable doubt of the guilt of a defendant in accordance with these instructions, it is your duty to find him guilty.

In this case, as in every criminal case, each defendant is presumed to be innocent unless and until proven guilty beyond a reasonable doubt. This presumption of innocence was with each defendant when he was first presented for trial in this case. It continues with him throughout the trial.

As far as you are concerned he is innocent and he continues innocent unless and until such time as all the evidence produced in the trial considered in the light of these instructions of law, satisfies you beyond a reasonable doubt that he is guilty.

that each defendant is presumed innocent but also that his activities and private business transactions are presumed to be lawful, fair and regular, and that the ordinary course of business has been followed and that the law has been obeyed.

The burden of proving a defendant guilty of the crimas with which he is charged is upon the government. A

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defendant does not have to prove his innocence. This means that before you may find any defendant wilty of any count, the government must prove to you beyond a reasonable doubt each and every element necessary to constitute the crime charged.

whether that burden of proof resting upon the government has been sustained depends not on the number of witnesses nor on the quantity of the testimony, but on the nature and the quality of the testimon.

Now, a reasonable doubt, as the word enggests, means a doubt founded upon reason. As the words imply, it is a doubt as will be entertained by a reasonable person after all the evidence in the case is carefully analyzed, compared and weighed. A reasonable doubt may arise not only from the evidence produced, but also from a lack of the government's evidence.

prove the defendant guilty beyond a reasonable doubt of each element of the crime charged, a defendant has the right to rely on the failure of the prosecution to establish such proof.

However, absolute or mathematical certainty is not required, but there must be such certainty as satisfies your reason and judgment and such that you feel conscientiously bound to act upon.

It is not a fanciful doubt or a whimsical or capricious doubt, for anything relating to human affairs and

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depending upon human testimony is open to some possible or imaginary doubt.

A reasonable doubt is such doubt as would cause a prudent person to hesitate before acting in matters of importance to himself or herself.

So if the evidence warrants, in your judgment, the conclusion that a defendant is guilty so as to exclude every other reasonable conclusion, you should declare him to be guilty.

On the other hand, if on all the evidence you have a reasonable doubt as to the guilt of a defendant, you must find him not guilty.

Whenever in these instructions I tell you that a certain element must be established before there can be a conviction on a certain count, I also mean that this element must be established according to the standard of proof I have just explained.

That is proof beyond a reasonable doubt.

That standard applies to every finding that is essential to a conviction of any defendant on any count. So if I don't repeat the standard of proof each time, bear in mind that it applies every time I speak to you about an element of the offense or a finding that you are entitled to make.

findings necessary to conviction on any count, I instruct you

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that you may not conclude that such an element or such a finding is established simply because you may think the weight of the evidence tips somewhat in favor of the government. The standard of proof is provide beyond a reasonable doubt.

wiolstions of federal law, that is, charges against each of the nine defendants on trial. The allegations are set forth in Indictment No. N-75-59. An indictment is simply a statement of charges made by the Grand Jury. The Grand Jury that returned this indictment heard only the government's evidence. There was no opportunity for cross-examination of any witness by any defense counsel nor for presentation of any defense testimony.

You are the only jurors to have heard all the evidence in this case. The fact that an indictment was returned is to be given no weight by you in making your decision as to the guilt or innocence of each defendant.

ment of the charges. It defines the crimes charged and the manner of their alleged accomplishment. The indictment is without bearing or significance in your consideration of this case and it is to be accorded no weight by you in determining the guilt or innocence of any defendant. By their pleas of not guilty, the defendants have denied each and every allegation set forth in the indictment.

As I have mentioned during the trial, you

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are really considering nine separate cases. Each one involving one individual defendant. The nine cases are tried together in one trial simply as a matter of convenience. You must not permit the fact of a single joint trial to have any bearing whatsoever on your verdicts in each individual case.

Much of the evidence you have heard may be considered in each of the nine cases, except as I have specifically instructed you otherwise during the trial. Nevertheless, it is your duty and it is an especially important duty to give individual consideration to the case of each defendant, just as if he were being tried alone. You must not permit your verdicts in the case of any one defendant to influence your verdicts in the case of any other defendant nor should your verdict on any one count influence your verdict on any other count.

Now, as to the charges, you may well be surprised to learn that the defendants are not charged with the crime of arson. That is an offense under state law and in and of itself violated no federal statute.

trial with violation of four different federal statutes. Your task is to determine whether or not the government has proved beyond a reasonable doubt that one or more or all of the defendants are guilty of violating one or more or all of these particular federal statutes, but I emphasize that the only

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charges for you to consider are the four federal violations set forth in the indictment.

Before explaining the charges or counts of the indictment in detail, let me give you a summary of them so you will have them all generally in mind as I discuss each one.

There are four counts, that is, four separate violations of federal law are charged, although not all defendants are charged in every count, as I will explain later.

of course, the fact that not all defendants are charged in all counts should have no bearing whatsoever on your consideration of any of the issues in this case. Counts 2, 3 and 4 charge what are called substantive offenses, that is, the actual commission of a crime.

Count 1 charges a conspiracy. That is a combination of two or more persons who agree to commit a crime.

T will start with the substantive offenses.

Count 2 charges all nine defendants with a violation of the interstate travel act, that is, traveling from one state to another with the intent to promote an arson and thereafter performing some act to promote an arson.

Ronald Betres, with transporting explosives from one state to enother with the knowledge and intention that the explosives would be used to destroy Plant 4 at Shelton.

Count 4 charges all nine defendants with

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possession of a destructive device that was not registered to any of them.

These are the three substantive offenses.

Count 1 charges all nine defendants with the offense of conspiracy, specifically, a conspiracy to commit the offense charged in Count 2, interstate travel with intent to promote an arson.

counts in detail. What I am about to discuss at this point concerns the three substantive counts and not the conspiracy count. With respect to each of the three substantive counts, there are two ways in which a defendant can be found guilty. One is as a principal, that is, he is found beyond a reasonable doubt to have committed the offense himself and to have had the requisite knowledge or intent.

The second way a person may be found guilty of a substantive offense is as an aider or abetter, that is, he is found beyond a ressonable doubt to have aided or abetted someone else to commit the offense and he has the same knowledge or intent required for conviction as a principal.

you aids or abets another to commit a crime, then he may be found quilty of the crime even if he did not personally do each act necessary to constitute the offense charged.

Now, Section 2 of the Criminal Code provides
as follows: "Whoever commits an offense against the United States

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or aids, abots, counsels, commands, inducas or procures its commission, is punishable as a principal."

Under this statute, every person who willfully perticipates in the commission of a crime may be found to be quilty of that offense.

Participation is willful if done voluntarily and intentionally and with the specific intent to do something the law forbids, that is to say, with bad purpose either to disobey or to disregard the law.

In order to aid and abet another to cosmit a crime, it is necessary that the accused villfully associate himself in some way with the criminal venture and willfully participate in it as he would in something he wishes to bring about; that is to say, that he willfully seek by some act of his to make the criminal venture succeed.

must be shown beyond a reasonable doubt to know the objective of the criminal venture and to intend by his actions to help make that venture succeed. He must also be shown beyond a reasonable doubt to have the same knowledge or intent required for conviction as a principal.

A person cannot be convicted of aiding and abetting the commission of a crime unless the evidence establishes beyond a reasonable doubt that the crime occurred and than some other person performed the acts constituting the

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as a principal or as an aider or abetter or as a co-conspirator simply by being present during the commission of a crime, even if he has knowledge that a crime is being committee. There must be proof beyond a reasonable doubt that a defendant participated in the criminal offense, that he in some way took action to help make the venture succeed.

If you find with respect to any defendant on any count that he is guilty as an aider or abetter, your verdict is simply guilty on that count, without any specific mention of the aiding and abetting statute.

Count 2, the first of the substantive counts, charges a violation of Section 1952 of the Criminal Code. That section reads as follows:

- "(a) Whosver travels in interstate ...

 commerce ... with intent to (3) ... promote, manage, ... carry
 on or facilitate the promotion, management, ... or carrying on,
 of any unlawful activity, and thereafter performs or attempts to
 perform any of the acts specified in subparagraph 3, shall be
 punished.
- "(b) As used in this section 'unlawful activity' means ... arson in violation of the laws of the State in which committed"

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cf this statute by all nine defendants. Count 2 roads as follows:

"On or about February 28, 1975 in the District of Connecticut and elsewhere," the nine defendants -- I won't read all the names -- "did travel and cause travel in interstate commerce between Butler, Boyers and Pittsburgh, all in the Commonwealth of Pennsylvania and New York in the State of New York and Shelton, Derby, Danbury and New Haven, in the State of Connecticut, with the intent to promote, manage, carry on and facilitate the promotion, management and carrying on of an unlawful activity, to wit: the commission of arson in violation of Section 33(a) - 113, Connecticut General Statutes and did perform acts to promote, manage, carry on and facilitate the promotion, management and carrying on of such unlawful activity."

There are three elements of the crime charged in Count 2, each of which must be proven beyond a reasonable doubt before there can be a conviction of a defendant on Count 2.

I will first list them and then add some explanation.

The first element is that the defendant whose case you are considering traveled in interstate commerce on or about Pebruary 28, 1975.

The second element is that he traveled with certain intent, namely, the intent to promote, manage, carry on

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or to facilitate the promption, management or carrying on of an arson in violation of the laws of Connecticut.

sequent to such interstate travel he performed or attempted to perform one or more acts to promote, manage, carry on or facilitate the promotion, management or carrying on of an arson.

The first element of interstate travel simply means traveling from any place in one state to some place in another state. The government contends that eight of the nine defendants did travel from one state to another on or about February 28th.

Hew York back to Plant 4 in Connecticut, that Peter Betres went from Pennsylvania to Connecticut at the Bridgeport Railroad Station and to the Derby Howard Johnson's, and that Dennis and Michael Tiche went with John Shaw from Pennsylvania to New Haven, Connecticut and then to the plant, that Just, Coffey and Ronald Betres went from Pennsylvania to Danbury, Connecticut and then to the plant, and that Connors went from Pennsylvania to Derby, Connecticut and then to the plant. There is no claim that Mocller personally traveled on February 28th; the claim against him is that he aided and abetted the others to violate Section 1952.

The second element concerns the intent a person has when he travels interstate. He must be shown to have

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the intent to promote, manage, carry on or facilitate the promotion, management or carrying on of an arson in violation of Connecticut law.

that assists or makes easier the act in question -- here the arson. I instruct you that a person commits arson in violation of Connecticut law if he rocklessly causes destruction of a building of his own or another by intentionally starting a fire or causing an explosion.

It is not necessary that a defendant intend to violate any specific section of Connecticut law. It is sufficient that he intend to take some step to help bring about the arson and that he knew that arson was unlawful.

In determining whether a defendant had the requisite intent that is the second element of the offense charged in Count 2, you are asked to determine what was in his mind, what he was thinking.

You will also have to consider a defendant's intent and knowledge with respect to all the other counts as well; so let me say a few words about how you are entitled to approach the task of determining whether the government has proved the requisite intent beyond a reasonable doubt.

Obviously you cannot look into a person's mind to find out what he knows or what he intends. A person's intent and knowledge can ordinarily be inferred from what he

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does or what he says in light of the circumstances under which he acts or speaks.

requisite intent that is the second element of Count 2, you should first consider what facts you find established as to what that person said or did and the circumstances under which he spoke or acted, and then consider whether you choose to draw from those facts the inference that the requisite intent was in the mind of the defendant whose case you are considering.

of course, this element of intent, like all other elements, must be established beyond a reasonable doubt to support a conviction on this count.

Tou will recall that when I first montioned this element of intent, I referred to it in the context of a defendant traveling with the requisite intent. I emphasize that now because in order to find the second element established, you must be persuaded a wond a reasonable doubt that a defendant had the requisite intent when he traveled into Connecticut.

Now as to some of the defendants, there is evidence which, if you accept it, indicates that prior to their travel to Connecticut they took steps in preparation for the travel of themselves or co-defendants, and from such evidence you would be entitled to infer, but of course not required to infer, that when they themselves traveled to Connecticut on the

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28th, if you find they did, that they traveled with the requisite intent.

As to other defendants, however, you may conclude that there is no evidence that they did anything in connection with the arson until they got to Connecticut.

For example, if you find that Ronald Betres
was one of the trio at the Holiday Inn in Danbury and if you find
that he was one of the trio that abducted the plant guards, you
might still conclude that there is no evidence of his having
done anything to plan for the arson before he traveled to
Connecticut.

In such circumstances, you would still be entitled, though not required, to infer that he had the requisite intent at the time he traveled to Connecticut.

the requisite intent only after traveling to Connecticut, then that defendant must be acquitted on Count 2. But you could find this elament of intent established if you are persurded beyond a reasonable doubt that the defendant's actions or words under all the circumstances, even after traveling to Connecticut, support the inference that he did have the requisite intent at the time he traveled to Connecticut. More simply, what a person does at one point in time can be considered as evidence of what his intent was at a somewhat earlier point in time.

The third element of Count 2 is the doing or

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promote or in some way help carry out the arson. The set itself does not have to be unlawful, but it must be an act that either helps or attempts to help to bring about the arson.

The government contends that eight of the defendants did perform such an act after their interstate travel. They contend that Dennis and Michael Tiche, along with Shaw, placed the dynamite and gasoline in Plant 4, that Just, Coffey and Bonald Betrus abducted the guards, that Roverend Bubar brought the Tiches and Shaw, plus Just, Coffey and Ronald Betrus, into the plant, that Peter Betrus received cash from Bubar and paid some of it to Dennis Tiche at LaGuardia Airport and that Connors helped unlead the barrels at Plant 4.

As to Defendant Moeller, the Government contends that he is guilty as an eider or abetter on the theory that he eided or abetted or commanded or procured the commission of the offense charged in Count 2 by one or more of the defendants.

The government contends he knew about the plan from the start and acted to procure commission of the crime by providing Subar with funds to pay for those who would come to Connecticut to accomplish the arson.

you wild have to be persuaded boyond a reasonable doubt that he command or procure the commission of the offense and that he

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knowingly and intentionally made funds available to Bubar for the purpose of accomplishing the arson. In other words, it would not be sufficient to establish simply that Moeller knew he was paying funds to Bubar. For Moeller to be guilty as an aider and abetter, he must be shown beyond a reasonable doubt to know and intend that the funds would be used to help accomplish the arson. It is not necessary for the government to establish that Moeller specifically intended that anyone cross a state line. He could be found guilty as an aider and abetter if under the standards I have explained to you, he did command or procure the commission of the arson by others and if one or more of those other persons crossed the state line and thereafter acted to help bring about the arson.

One other point with respect to Count 2; this concerns Defendant Coffey. I instruct you that Coffey may not be found guilty co Count 2 even if you find he rented the Avis truck unless you also find beyond a reasonable doubt that he was in the plant on March 1.

In considering whether he was in the plant on March 1, you can consider all the evidence in his case.

Count 3 charges a violation of Section 844

(d) of the Criminal Code. That section reads as follows:

"Whoever transports ... in interstate commerce any explosive with the knowledge or intent that it will be used ... unlawfully to damage or destroy any building ..." shall

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be punished.

Count 3 of the indictment charges a violation of this statute by eight defendants, all except Bonald Betres.

Count 3 reads:

"On or about the 28th day of February, 1975, in the District of Connecticut and elsewhere," and then it lists the defendants, all except Ronald Betres, "did transport in interstate commerce from Boyers in the Commonwealth of Pennsylvania to Shelton in the State of Connecticut, explosives, that is, dynamite, detonating or primer cord and blasting caps, knowing and intending that the said explosives would be used unlawfully to damage and destroy a building on Canal Street, in Shelton, Connecticut, known as Plant No. 4, Sponge Rubbet Products Company."

in Count 1, each of which must be proven beyond a reasonable doubt before there can be a conviction on that count.

First, that a defendant on or about February 26th, did knowingly transport an explosive from Pennsylvania to Connecticut; second, that at the time of the transportation, he knew or intended that the explosive would be used unlawfully to damage or destroy a building.

With respect to the first element, the statute defines "explosive" to include all forms of high explosives, blasting materials, detonators and detonating agents.

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You would be entitled to conclude that dynamite is an explosive within the meaning of Section 844(d).

with respect to the second element, it is not required that the person who transports the explosive both know and intend that it would be used unlawfully to damage or destroy a building. It is sufficient if he either knew it would be so used or intended it would be so used.

An explosive is used "unlawfully" to destroy a building if it is used in the course of an arson in violation of state law.

As with Count 2, the requisite knowledge or intent for Count 3 must be found to exist at the time of the transportation of the explosive or prior to such transportation.

Now in considering Count 3, you will again be concerned with the distinction I previously explained between those who may be found guilty as principals and those who may be found guilty as aiders or abetters.

The government's evidence, if you accept it, would tend to establish that the only defendant who actually transported an explosive from Pennsylvania to Connecticut was Connects.

The issue most seriously contested in his case is whether at the time of the transportation he had any knowledge of what his cargo was or any knowledge or intent that his cargo would be used to destroy Plant 4.

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thave previously explained the principles concerning the permissible inference of knowledge and intent from what a person does or says. And I will have some more to say specifically about the Conners case in a few moments.

as to all of the other defendants, the government contends they are guilty of Count 3 in that they knowingly aided and abetted Connors in transporting explosives. Bear in mind the standards I have proviously explained as to what constitutes aiding or abetting. Without repeating them in detail, let me simply remind you that they require that a person know the objectives of the criminal vanture and by his action participate in it, that is, make it his own or in some way help to bring about the commission of the offense.

And again I remind you that an aider or abetter under Count 3 must be shown to have the same intent required for conviction as a principal.

You will also recall that I told you a person can be found guilty as an aider or abotter only if someone else, the principal, consitted the acts constituting the offense.

It is not necessary, however, that a principal be found quilty.

With respect to Court 3, if you find that
Conners did transport an explosive from Pennsylvania to
Connecticut, but if you are not persuaded beyond a reasonable
doubt that he knew or intended the explosive to be used to

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destroy Plant 4, then you must acquit Connors on Count 3.

but in that event, you could still find sens or all of the other defendants guilty on Count 3, if you find beyond a reasonable doubt that they knowingly aided and abetted his transportation of explosives.

of course, before you could make such a finding, you would have to find that the defendant whose case you are considering knew or intended that the explosives would be used to destroy Plant 4 and that the defendant took some act to join the criminal venture of transporting the explosives and helped make that venture succeed.

The point is that a lack of knowledge on Connors' part is not a defense that precludes a finding of guilty of any other defendant on Count 3.

defendents charged in Count 3 other than Connors did take some action that makes them liable as an aider or abetter of Connors' transportation. They contend that Moeller authorized the payment, that Reverend Bubar distributed payments to Peter Betres, that Peter Betres helped dispatch Connors on his way in the early morning hours of February 28th, that Dennis Tiche and Michael Tiche helped prepare the truck's cargo and load the truck, that Coffey rented the truck and that Just made a trip to the plant on February 17th with Dennis Tiche to look over the situation.

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defendants can be found quilty of aiding and shetting the interstate transportation of explosives, as charged in Count 3, you must be persuaded beyond a reasonable doubt that he took action to become an aider or abstter, as I have defined those terms, sometime prior to the interstation transportation of the explosives.

Specifically, even if you find, for example, that Just or Coffey or both of them were part of the trio that abducted the guards the night of March 1, that action cannot be considered as aiding or abetting the interstate transportation of explosives because by that time that transportation had ended.

Of course, if you find that either Just or Coffey or both were part of the trio that abducted the guards, you can consider the circumstances in deciding whether to infor that either or both had the requisite knowledge and intent concerning the intended use of the explosives at an earlier time when both are alleged to have taken some action to aid or abet the transportation.

So in considering the liability of each defendant, other than Connors, as to Count 3, first decide whether explosives were transported from Pennsylvania to Connecticut. If you find they were, then as to each defendant,

decide whether you are persuaded beyond a reasonable doubt that he took some action before that transportation, but not after it, that aided or abetted that transportation.

persuaded beyond a reasonable doubt that at the time he took such action, but not after, he knew that he was aiding or abetting the transportation of explosives and knew or intended that those explosives would be used to destroy Plant 4.

Count 4 charges a violation of Title 26, United States Code, Section 5861(d). That section reads:

"It shall be unlawful for any person to receive or possess a firsarm which is not registered to him in the National Firearms Registration and Transfer Record." Count 4 charges all nine defendants with a violation of this statute.

Count 4 reads as follows:

"On or about March 1, 1975, in the District of Connecticut and elsewhere," and it lists all nine defendants, "did willfully and knowingly receive and possess a firsarm as defined," and the pertinent statute, "to wit: a destructive device consisting of dynamite, detonating or primer load, blasting caps and gasoline, which firearm was not registered to any of them in the National Firearms Registration and Transfer Record."

There are three elements of the crime charged in Count 4, each of which the government must prove beyond a

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resconable doubt before there can be a conviction on that count.

The first element is that a defendant on or about March 1, 1975 did possess a firearm within the meaning of the federal statute.

The second element is that his possession was knowing, that is, that he knew that what he passessed was a firearm.

The third element is that at the time of possession, the firearm was not registered to him in the National Firearms Registration and Transfer Record.

with respect to the first element, possession of a firearm, the statute includes a definition of what constitutes a firearm. Included in that definition is the term "a destructive device," and "destructive device" is defined to mean "any explosive bomb."

In this case the government contends that
the assembled device consisting of barrels of gasoline, dynamite,
detonating cord running to the dynamite and a timing device is
the destructive device or firearm that was possessed by the
defendants.

While dynamite alone does not constitute a destructive device within the meaning of the statute, if you find there was in Plant 4 on the night of March 1 an assembled device of dynamite, detonating cord, gasoline and a timing device so constructed as to detonate the dynamite and ignite the

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gasoline and cause an explosion and fire, you would be entitled to conclude that this device was a destructive device or firearm within the meaning of this statute.

I should point out that this is the only device possession of which can be considered in connection with Count 4.

There was some testimony about a pistol, but I instruct you that possession of that firearm, if it occurred, is not sufficient to prove the offense charged in Count 4.

the possession required for this first clement need not be solely the possession of one person. Two or more persons may jointly share possession of an item, so long as each has direct physical control over the item.

As to the second element, knowing possession simply means that the defendent knows that what he possesses is a destructive Gevice.

It is not necessary that he know that the device comes within the statutory definition of federal law. Nor is there any requirement that a defendant know that the device must be registered or know that it is in fact not registered. But there must be evidence that proves beyond a reasonable doubt that he knew what was possessed was a destructive device, in this case, a device capable of causing explosion and fire. Let me arend that last sentence. I don't think it's a disputed issue in the case, but a defendant would

have to know that the device was not registered. If something had been filed and he thought it had been registered, he would not have the requisite intent, but the point is he doesn't have to know that this particular device, if he possessed it, requires registration.

The third element is simply the fact that the device was not registered. You will recall there are in evidence cortificates showing that a search was made of the National Firearns Registration and Transfer Record and this search disclosed no record of a destructive device registered to any of the defendants. You are entitled, though not required, to conclude that these certificates establish the third element of the offense.

Again as with the other substantive offenses you will have to give consideration to the distinction between principals and aiders or abetters.

The government's evidence, if you accept it, would tend to show that the destructive device was possessed in Plant 4 by Dennis and Michael Tiche along with John Shaw.

The government has also offered evidence to prove that each of the other defendants took some action to aid or abet their possession of the device.

I have previously explained what sort of action and state of mind is necessary to constitute someone as an aider or abetter.

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Let we point out that as to this count, while Count 3, the action of any defendant whem you find was in the plant and who participated in the abduction of the guards can be considered by you in deciding whether a defendant acted so as to aid and abet the commission of the offense charged in Count 4.

of course, no defendant can be convicted as an aider or abetter under Count 4 unless you find beyond a reasonable doubt that he knew about the destructive device and intended by his action to participate with others in their possession of that device.

Thus far I have been discussing the three substantive counts. How let me turn to the conspiracy count charged in Count 1. Section 371 of the Criminal Code reads:

"If two or more persons conspire ... to commit any offense against the United States ... and one or more of such persons do any act to effect the object of the conspiracy, each shall be punished.

Count 1 charges all nine defendants with conspiring to commit the substantive offense charged in Count 2, that is, the interstate travel offense.

The charging language reads:

"Commencing on or about the month of December, 1974," then skipping a few words, but you will have the indictment with you -- the nine defendants did combine --

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willfully and knowingly did combine, conspire, confederate and agree together and with each other and with diverse other persons to the Grand Jury unknown, to commit the following offense against the United States," and then the indictment lists the substantive offense charged in Count 2.

Count 1 also status:

"In furtherance of the conspiracy and to effect the objects thereof, the defendants did commit, among others, the following overt acts," and it then lists a series of overt acts. I won't read then to you. They are set forth in the indictment.

offense charged in Count 1, each of which must be proven beyond a reasonable doubt before there can be a conviction on that count.

The first element is that the conspiracy charged in Count 1 was formed and existed at or about the time alleged.

Second, that the defendant whose case you are considering, willfully became a member of the conspiracy.

conspiracy knowingly committed at least one of the alleged overt acts in furtherance of the purposes of the conspiracy.

Now let my turn to each element of Count 1 in some detail. The first element concerns the existence of the

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conspiracy charged in the indictment.

A conspiracy is an agreement between two or more persons to accomplish some criminal or unlawful purpose.

It is sometimes referred to as a partnership in crime.

The agreement is the essence of the conspiracy. The agreement is established if you find that two or more persons, in any manner, through any contrivance, impliedly or tacitly came to a common understanding to violate the law. Meither empress language nor any particular words are needed to indicate that such an agreement was formed.

the government is not required to show that two or more persons entered a solenn compact in writing stating that they have formed a conspiracy. Indeed, it would be surprising if there were such a formal agreement.

Your compon sense will tell you that if people join together in forming a criminal conspiracy, much is left to their unexpressed understanding. From its very nature a conspiracy is usually secret in its origin and execution.

In determining whether there has been an unlawful agreement, you may consider the acts and conduct of the defendant and of the alleged co-conspirators that are done to carry out an apparent criminal purpose.

The adage "action speaks louder than words".
is often applicable. Sometimes the only available evidence is

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a series of disconnected acts, which, when taken together, show the existence of a conspiracy.

The conspiracy alleged in Count 1 is a conspiracy to commit the substantive offense charged in Count 2, that is, a conspiracy to travel in interstate commorce with the intent to promote an arson in violation of Connecticut law and thereafter to commit some act to promote or help promote that arson.

The fact that a defendant is charged with a substantive offense does not mean that he may not also be charged with the separate offense of conspiracy to commit that same substantive offense.

Whether he is guilty, however, depends on whether each of the elements of the conspiracy offense has been proved beyond a reasonable doubt.

Furthermore, the first element of the conspiracy offense can be established only by proof that the particular conspiracy elleged in Count 1 of the indictment is the conspiracy that was established. Proof of some other conspiracy will not suffice.

The second element is whether the defendant whose case you are considering willfully became a member of the conspiracy.

To find that a defendant became a member of a conspiracy, you must be persuaded beyond a reasonable doubt

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that by his words or his conduct or both he clearly indicated his decision to join the conspiracy with the specific intention of advancing its objectives and that he willfully participated in the plan and in some sense promoted the venture himself or made it his own or indicated that he had a stake in the venture.

On this point it is important to bear in mind that a defendant's joining of a conspiracy cannot be shown by his more presence with other numbers of the conspiracy even if he has knowledge that there is a conspiracy being formed or existing.

Mere similarity of conduct among various persons, and the fact they may have associated with each other, and may have assembled together and discussed common aims and interests, does not necessarily establish proof of the existence of a conspiracy.

and being present with criminals, even if one knows of their criminal activity, does not make a person a participant in a criminal enterprise. One may join a conspiracy without being assigned any particular role in the conspiracy. And a descriminal can be found to have joined a conspiracy even if he does not know all the members of the conspiracy and does not know all the conspiracy.

But there must be proof beyond a reasonable doubt that he knows the objectives of the conspiracy and makes

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clear his intention to join the conspiracy in order to promote these objectives.

A defendant may be found to have jointed a conspiracy after it has initially been formed and if he does join, he is as responsible for the conspiracy and for all acts taken in furtherance of it as those who joined in the beginning.

However, a defendant is not liable for any action taken by a co-conspirator beyond the scope of the conspiracy he understands he is joining.

has I mentioned, the act of joining a conspiracy must be done willfully. An act is done willfully if it is done voluntarily and with intention, with a specific intent to do senathing that the law forbids, that is, with a bad purpose either to disobey or disregard the law.

In deciding whether there is proof beyond a reasonable doubt that a defendant whose case you are considering knowingly and willfully became a member of the conspiracy, you are entitled to consider all the evidence in his case, but you should be concerned primarily with the statements and actions of that defendant, what he said and what he did.

of course, in deciding whether a defendant's words or actions demonstrate a willful joining of a conspiracy, you are entitled to consider the circumstances then existing that are known to the defendant at the time he makes the statements or does the acts that you find are established. In other

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words, his words or acts are to be considered in content, not in the abstract.

If you find that a defendant did join the conspiracy, then you can find that he is liable for all of the statements and actions of other members of the conspiracy that are made or taken in furtherance of the objectives of the conspiracy. And he is liable oven if these statements were made or these actions were taken in his absence.

objects of the conspiracy and intended to promote them, he must be shown to have the same knowledge and the same intent necessary for conviction on the substantive offense charged in Count 2. In other words, don't think that a person can be convicted on a conspiracy count on less proof of knowledge and intent than is required for the substantive interstate travel count.

can be guilty of conspiracy if he is just vaguely on the fringes of a criminal venture. That is not so. To he guilty of conspiracy, a defendant must be shown to be a knowing and willful participant in the agreement to commit the substantive offense and he must have the same intent required for conviction on the substantive count.

The third element of the comspiracy count concerns the knowing commission of at least one overt act in

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furtherance of the conspiracy. You can read the list of them from the indictrent you will have in the jury room. It is a rather long list and I won't read it now. An overt act need not be a criminal or unlawful act in and of itself but it must have been done to effect or promote or assist in the accomplishing of a purpose of the conspiracy.

It is not necessary that an overt act be charged in the indictment against all of the defendants. Neither is it necessary for you to find that all of the overt acts were committed or that an overt act is performed by all of the defendants.

This element, this third element of the conspiracy offense, is established if at least one member of the conspiracy knowingly performed at least one overt act in furtherance of the conspiracy.

Let me add some additional words that apply specifically to the case of Defendant Connors. What I am about to say concerns his liability for the substantive counts, Counts 2, 3 and 4 and not for Count 1, the conspiracy count.

You will recall that as to each of the three substantive counts, an element of the offense involved knowledge or intent. For Count 2, an accused must travel with intent to promote an arson.

For Count 3, he must transport explosives with knowledge or intent that they be used to destroy Plant 4.

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For Count 4, in order to be charged with possessing an unregistered firearm, destructive device, an accused must have knowledge that what he possesses is a firearm or, in this case, a destructive device.

In seeking to establish these elements of knowledge or intent, the government is entitled to rely on either of two approaches. The first, as with every defendant, is to persuade you that an inference of the requisite knowledge or intent ought to be drawn from the established facts of what a defendant did and the circumstances under which he did it.

For example, the government contends that Commors picked up his cargo at a roadside location in the middle of the night without a bill of lading and with instructions to telephone to find out his precise destination.

asks you to draw the inference that he knew the nature and purpose of his cargo. Of course, that is disputed.

However, the government is also entitled to rely on a second approach in seeking to persuade you that Connors had the requisite knowledge or intent. The government contends that Connors in effect shut his eyes to what he preferred not to learn.

Now I instruct you that guilty knowledge cannot be established by demonstrating merely negligence or even foolishness on the part of a defendant.

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government prove to a certainty that Conners knew his cargo was explosives.

Such knowledge can be considered established if the defendant was aware of a high probability that his cargo was explosives, unless he actually believed that his cargo was not explosives.

If you find that Connors acted with rackless disregard of whather his cargo was explosives and with a conscious purpose to avoid learning the truth, the requirement of knowledge would be satisfied, unless the defendant actually believed that his cargo was not explosives.

In addition to the circumstances under which the cargo was picked up, the government relies on Connors' statement to the FBI and the Grand Jury. Connors has presented evidence tending to negate that he had the requisite knowledge. It is an issue for you to decide.

of course, even if you are persuaded under either approach that Connors had knowledge of his cargo or is chargeable with such knowledge, you cannot convict on Counts 2, 3 or 4 unless you are also persuaded beyond a reasonable doubt that he not only knew his cargo was explosives but also with respect to Count 2, intended by his travel to help promote an arson, and, with respect to Count 3 had the intent or knowledge that his cargo would be used to destroy Plant 4, and, with

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respect to Count 4, had the knowledge that his cargo would be assembled into a destructive device.

these two approaches to establishing guilty knowledge -- inferring it directly from the circumstances or relying in part on a conscious purpose to avoid learning the truth -- under the standards I have given you, are applicable only to the substantive offenses, Counts 2, 3 and 4.

As to Count 1, the conspiracy offense, I instruct you that the second approach, that is, relying on a conscious purpose to avoid learning the truth, may not be used at all.

count you must be persuaded beyond a reasonable doubt that during the conspiracy he possessed knowledge of the objectives of the conspiracy and had the intent to promote those objectives, and such knowledge and intent must be established from the facts and circumstances of the evidence without any aid at all from the conscious avoidance approach.

How, as you can see, the situation concerning the Connors case is somewhat complicated and I regret to tell you there are even further complications that you must be aware of. But it is important that you understand the distinctions I am about to call to your attention so that the issues in his case are fairly decided according to the rules of lay.

I have already told you that, as with every

defendant, you are entitled to consider all the facts and circumstances established by the evidence in his case in deciding whether you are persuaded beyond a reasonable doubt that a defendant possessed the requisite knowledge and intent.

Now in the Connors case there is evidence, if you accept it, that one of the circumstances bearing on his knowledge is the presence of some gasoline leaking from one of the drums being unloaded from the Avis truck.

observable by sight end smell. The Connors defense sharply disputes that evidence, relying on Shaw's failure to mention that fact in earlier statements and also on the tight scaling of the drums and the absence of gasoline traces in the truck.

of course, you are the judges of all the facts, including whether there was gasoline observable as Shaw testified. If you find gasoline was not observable, then from the circumstances existing when Connors picked up the truck plus what Connors later said, you either draw the inference that he knew what his cargo was while he was driving or you do not draw such an inference.

If he knew while driving, then you decide whether the other elements of the offenses charged have been established. If he didn't know then we go on to the next problem.

The complication arises if you conclude that

the gaseline was leaking and hence observable but that Connors did not know what his cargo was before he became awars of the gaseline at Plant 4.

In that event, of course, you could still conclude that even with knowledge of the leaking gasoline you are not persuaded beyond a reasonable doubt that Connors knew what his cargo was, and in that event, he must be acquitted on all counts.

Mosever, if you find as a fact that gasoline was leaking and if this circumstance persuades you that Connors became aware of his cargo for the first time at Plant 4, then he still must be acquitted on Count 2 because by that time his interstate travel to Connecticut had ended and under such circumstances there cannot be a conviction of Connors on Counts 1, 3 or 4 unless you find that after learning what his cargo was he took some action that makes him guilty of one or more of those three counts.

In other words, if he learned what his cargo was at the first time at the plant and did nothing thereafter except return home, he did not knowingly join the conspiracy nor commit nor aid and abet the substantive offenses charged in Counts 3 and 4.

Now the government contends he did take some action after the gasoline was, as they contend, observable.

They rely on Shaw's testimony that Conners

helped unload the barrels. That testimony too is vigoroughly disputed by Conners' defense.

until he got to the plant and if he did not thereafter help unload the barrels, then he must be acquitted on all counts.

on the other hand, if he did not know what his cargo was until he got to the plant and did help unload the barrels, then you must decide whether that action is sufficient to complete the offenses charged in Counts 1, 3 and 4.

As to Count 1, the conspiracy count, conviction could result only if you find that by unloading the barrels, Connors manifested an intention to join the conspiracy.

As to Count 3, the transportation of explosives count, conviction could result only if you find that the interstate transportation has not been completed and that the unloading of the barrels was an act that furthered that transportation.

of a cargo does not necessarily end as soon as a state line is crossed. Such transportation can continue until the journey of the cargo from one state to another has been completed. When such journey has been completed is a question of fact for you to decide.

As to Count 4, the pessession of a firearm count, conviction could result only if you find that by unloading

the barrels, Connors acted knowingly so as to aid and abot others in their possession of an unregistered firearm or destructive device.

Very details of the Connors case as you apply these standards of law. If you don't think he knew what his cargo was back in Pennsylvania, then you have to take a lask, did he come to knew what it was in Connecticut, and that involves, among other things, this very disputed issue of fact as to whether the gasoline was leaking.

If you find even then he didn't know or that the gasoline was not lashing and, therefore, he didn't know, then he must be acquitted on all counts. The problems I have been referring to arise if you find that he know for the first time what his cargo was when he got to the plant, and just knowing it was gasoline wouldn't be enough. You have to be satisfied he know what his cargo was. In other words, he would have to know to your satisfaction beyond a reasonable doubt that he had explosives. If he learned that at the plant, then the question is, did he take some act thereafter to complete the offense and that involves the disputed issue of unloading the barrels.

Now, in performing your task of determining the facts, obviously one of the most important things you have to do is pass upon this matter of credibility, that is, the believability of the various witnesses you have heard.

In considering cradibility there are various considerations you may want to keep in mind. One is the appearance that the witness made when he or she was on the stand. Try to size him up. Did he appear to be telling the truth? Did he appear to be honest? Did he appear to be intelligent? Did he appear to be a person who could have observed accurately what he is telling you, who would be likely to have remembered it accurately and who is capable of reporting it to your accurately?

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Another question for you to have in mind is whether the testimony he gave you is plausible. Does it ring true, are there inconsistencies in it; how does it fit in with other evidence in the case which you do believe and other facts which you find to have existed? Does it jibe with that evidence and those facts?

or impeached by showing that he previously made statements which are inconsistent with his present testimony in court. A prior statement is inconsistent with testimony if it includes something different from the testimony or omits something and under the circumstances you would have expected to omit matter to be stated in the earlier statement if it is true. The earlier inconsistent statements are generally admissible only to impeach the credibility of a witness and not to establish the truth of the earlier statement.

For example, if a witness testified in Court

that something happened on a Mednesday and on an earlier occasion he is shown to have said that it happened on a faturday, you may consider the earlier statement in deciding whether to believe him when he mays the event happened on a Mednesday. But the earlier statement is not evidence that the event actually happened on a Saturday. In determining credibility it is up to you to decide what significance to give to prior inconsistent statements.

Now in some circumstances a prior out-of-court statement of a witness can be considered not only to impeach his in-court testimony but it can also be considered as substantive evidence, that is, it can be considered for the truth of what was asserted in the prior statement.

This is permitted when the prior statement was made under oath at a prior proceeding. For example, in this case there is in evidence certain statements that John Shaw made to the Grand Jury and in-court hearings in the absence of the jury in this case.

Some of the defendants contend that in some respects Shaw's Grand Jury and court hearing statements are inconsistent with his trial testimony.

You are entitled to consider Shad's Grand
Jury and court hearing testimony as substantive evidence, not
simply to impeach his trial testimony, and if you find an
inconsistency, you are entitled to accept as true his earlier

statoment.

I further instruct you that if a witness reaffirms in his testimony the truth of something he said on a previous occasion, then that previous statement may be considered as fully as his testimony in court.

You may also bear in mind that if you should find that any witness has been deliberately falsifying on any material point in his testimony, you are privileged to take that fact into consideration in determining whether he has falsified on other points.

not repeated one fact to you accurately, it does not necessarily follow that he is wrong on every other point. A witness may be honestly mistaken on one part of his testimony and be entirely accurate and correct on other parts. A witness may even be deliberately falsifying on one point and yet be entirely truthful on all other points.

But if you find that a witness had deliberately lied on one material subject it is only natural that you would be suspicious of the testimony of that witness on all subjects.

antitled to disbelieve the witness' entire testimony. Thether you disbelieve it or not lies in your own sound judgment. You have the right to reject testimony even though it is uncontradicted if you feel you have a justifiable reason for doing so.

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Another question you may ask yourself is whether the witness has any bias or interest in the outcome of the case and if so, whether he or she has permitted that bias or interest to color the testimony.

Of course, it does not follow simply from the fact that a witness does have a bias or does have an interest in the outcome of the case, that his testimony is to be disbelieved. There are many people who, no matter what their interest in the outcome of a case may be, would not testify falsely.

On the other hand, a jury should always bear in mind that if a witness has a decided bias or has an interest in the outcome of the case, that bias or interest offers something of a temptation to shade his own testimony in accordance with the bias or to sway the person to advance his own interest, whether to gain some advantage for himself or to do damage to enother.

It may even be that a person's bias or interest has so operated on his mind that he has come to believe what he wants to believe and, therefore, he may testify falsely without at the time consciously realizing that his testimony is false.

so it should be obvious that if as regards any witness whose credibility you are testing he has some bias or interest in the outcome, that feet is one you are entitled to

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take into consideration in weighing that person's testimeny.

In short, you are to bring to bear on the cradibility of witnesses the same considerations and use the same sound judgment you apply to questions of truth and veracity which are Gaily presenting themselves for your decision in the important affairs of your life.

Let me add some further considerations you should bear in mind in considering the credibility of the witness John Shaw. In the first place, Shaw has admitted his participation in the criminal venture that resulted in the destruction of the plant.

By his own admission he is an accomplice of the perpetrators of the crimes charged in this indictment.

are not evidence of the quilt of any other defendant in this case; those pleas may be considered only to the extent they may affect Shaw's credibility.

I instruct you that the testimony of an accomplice should be weighed with caution and great care. Moreover, Shaw acknowledged that he has received certain benefits in return for his decision to cooperate with the authorities and testify.

He was allowed to placed to only two of the counts with which he was originally charged and he understands that the remaining counts will be dismissed.

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Purthermore, he faces a maximum sentencing on those two counts of ten years and he understands that any sentencing in the state case that grow out of this episode and any sentencing in a federal case in Pennsylvania arising out of a previous arson episode will be concurrent with whatever sentence he receives in this case, and will not be greater than whatever sentence is ultimately imposed in this case.

Further, he understands that there will be no state prosecution in Pennsylvania arising out of the prior arcon.

He also acknowledged receiving what is called use immunity, that is, that his testimony cannot be used against him in the event other charges are brought against him.

He also admowledged that he had received some cash payments from the government for food and living expenses between April and August.

In any event, Shaw has received various benefits and he still faces sentencing and he knew when he testified that his testimony would be known by the sentencing judge.

In such circumstances, you should realize that there is always the risk that an accomplice may shade his testimony or emballish it in ways he thinks may be helpful to the prosecution.

He may do so deliberately or he may do so

SAMBERS, CALE & RUSDELL Certified Stensoppe Reporters unintentionally, trying to honostly recall what happened, but reporting events or converstions to you with variations that he has come to believe are true.

He way even mistakenly believe that an acquittal of one or more defendants will cause him to lose some of the benefits he expects.

You should have these considerations in mind as you consider Shaw's credibility. They reenforce what I earlier told you about weighing the testimony of an accomplice with caution and great care.

However, I am not suggesting that you are not entitled to accept the testimony of an accomplice, even when he has received or hopes to receive substantial benefits.

is accurate as to most, and on occasion all details, and in some circumstances it may be the only evidence available to establish certain facts. You are entitled to rely on Shaw's testimony whether or not it is corroborated, but you should bear in mind all that I have said in deciding how much weight to give his testimony. You are free in your judgment to credit none of it, some of it or all of it.

You will recall the government offered the testimony of a handwriting examiner and a fingerprint examiner in this case.

The rules of evidence ordinarily do not permit

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witnesses to testify as to opinions or conclusions. An exception to this rule exists as to these whom we call expert witnesses. Witnesses who, by education and experience, have become expert in some art or science or profession may state an opinion as to relevant and material matter in which they profess to be an expert and may also state the reasons for their opinion.

received in this case and give it such weight as you think it deserves. If you should decide that the opinion of an expert witness is not based upon sufficient education and experience or if you should conclude that the reasons given in support of the opinion are not sound or that the opinion is outweighed by other evidence, you say disregard the opinion entirely.

Furthermore, I instruct you that the opinion of an expert witness can be rejected even if it is not contradicated by other evidence.

You are entitled to look at the exhibits concerning handwriting and fingerprint comparisons which are in evidence and make up your own mind on the issues in dispute.

For example, whether the signature on the Avis Cocument was written by Coffey.

In considering the testimony of government expert witnesses and in fact any government agents, whether of the FBI or any agency, you should bear in mind that their testimony is entitled to no greater significance simply because

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they are on loyers of the government.

Their testimony should be subject to the same considerations you apply to any witness regardless of their employment by the government.

heard were defendants. A defendant who wishes to testify is a competent witness and a defendant's testimony is to be judged in the same way as that of any other witness.

the law does not compel a defendant to take the witness stand and testify, and, in fact a defendant has an absolute constitutional right not to testify and no presumption of guilt may be raised and no unfavorable inference of any sort may be drawn from the fact that a defendant chooses not to testify.

You must not permit such a fact to weigh in the slightest degree against the defendant nor should it enter into your discussions or deliberations.

A defendant is not required to establish his innocence. He need not produce any evidence whatever if he does not choose to do so and there cannot be any adverse inference drawn from a defendant's failure to produce evidence.

As I have indicated, the burden is on the government to prove a defendant guilty beyond a reasonable doubt; if it fails, a defendant has the right to rely on that failure and of right must be acquitted.

mediated a competition

You have been sitting patiently for quite a waile. There is a bit wors. We will take a ten-minute recess and then I will try to conclude.

(A recess was taken.)

(In the absence of the jury.)

in view of the fact it has taken many days to establish in this courtroom that my client is Reverend David Hobel Hubar, even amongst the opposition of all concerned, my confreres and the U.S. Attorney, but ultimately truth came in to employ the schnowledgment — one thing I am asking, sir, that the form of the return of the jury should state, and I shall only add as I am directed to by powers greater than I, the word preceding David M. Bubar should be Reverend David M. Buber.

the verdict form for that purpose. The verdict lists the names of the defendants. As for as I know his name is David W. Bubar. We may well have a title. Others in other circumstances are entitled to be addressed as doctor, which is an samed title, but that doesn't appear is a verdict form either. Only the names appear. I have referred to him as reverend in the charge. There is evidence in the case, but as far as the names of the people on the formal document, such as indictments and verdict forms, I am satisfied the name is sufficient and his name as far as I know is accurately listed.

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MR. EALOWITZ: May I say -THE COURT: You have made the point.

(Jury present 12:05 p.m.)

offered in evidence testimony concerning oral statements that three of the defendants are alleged to have made at various times after the fire.

There was evidence of an oral statement made by Roverend Bubar to FSI Agent Slifka and others on March 2nd. There was evidence of what Coffey is alleged to have said to FBI Agent McMullen on August 4th end 8th at the time of his arrest and shortly thereafter.

the PSI and the Grand Jury. Each of these statements is admissible only in the case of the defendant who was alleged to have made them.

The government contends that in each of these statements are some admissions of fact or circumstance that implicate those particular defendants.

Evidence relating to any statement claimed to have been made by a defendant outside of court and after a crime has been committed, should always be considered with coution and weighed with great care, and all such evidence should be disregarded entirely, unless the evidence in the case

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convinces the jury beyond a reasonable doubt that the statement was knowingly and voluntarily made.

A statement is knowingly made if done voluntarily and intentionally and not because of mistake or accident or other innocent reason.

In determining whether any statement claimed to have been made by a defendant outside of court, and after a crime has been cosmitted, was knowingly and voluntarily given, the jury should consider the age, training, education, occupation and physical and mental condition of the defendant and his treatment while in custody or under interrogation, as shown by the evidence in the case; and also all other circumstances and evidence surrounding the making of the statement, including whether, before the statement was made, the defendant knew or had been told and understood that he was not obligated or required to make the statement, that any statement which he might make could be used against him in a court; that he was entitled to the assistance of counsel before making any statement and that if he was without funds, to retain counsel of his choice and an attorney would be appointed to advise and represent him.

In Reverend Bubar's case, you are entitled to consider that his attorney was present. In Connors' case you are also entitled to consider the sequence of questions that were put to him before the Grand Jury in determining

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141 CHURCH STREET NEW HAVEN, CONNECTICUT whether his responses were voluntarily given.

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If the evidence convinces you beyond a reasonable doubt that a statement was made voluntarily and -- I am sorry. If the evidence -- let me begin that sentence again.

a reasonable doubt that a statement was made voluntarily and intentionally you should disregard it entirely.

On the other hand, if the evidence does show beyond a reasonable doubt that a statement was in fact voluntarily and intentionally made by a defendant, you may consider it as evidence in the case against that defendant.

Most of the evidence in this case is testimony from witnesses who took an oath to tell the truth and were subjected to cross-examination. However, under the rules of evidence, there was also admitted into evidence certain statements that are called hearsay.

that was made out of court by someone and is offered in evidence to prove that the assertion is true. The assertion may be presented in a written document or in another witness' courtroom testimony.

You should note that such evidence, although admissible in some circumstances, should be viewed carefully.

You should note that such out-of-court statements were not made under oath and thus the person making the statement is not

subject to panalties for perjury.

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out-of-court statements that were made to the Grand Jury. Those were made under oath. But I am talking about somebody quoting somebody under circumstances where no oath was administered.

opportunity to observe the demeanor of the person who is alleged to have made the statement. It is possible that the witness who related heseing the statement may have heard or reported it inaccurately and you should bear in mind that defense counsel has had no opportunity to cross-examine the person who allegedly made the hearsay statement.

And cross-examination, of course, is an integral part of our judicial search for the truth.

anch defendant, except mostler, is whether or not the defendant whose case you are considering was actually the person whom one or more witnesses identified as playing some part in the crimes charged. There is no issue of identification in the Mostler case. The burden of proof is on the prosecution with reference to every element of the crimes charged and this burden includes the burden of proving beyond a reasonable doubt the identity of the defendant as a perpetrator of the crimes charged.

of some eyewithesses at the plant and other witnesses at various

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locations in Connecticut and elsewhere, before the fire who said they recognised one or more of the defendants.

Now, all eyewitness testimony, whether the witness is identifying a defendant or a photograph, should be scrutinized with caution and great care. This is especially true of witnesses whose opportunity for observation is limited.

Eyewithess testimony is often unreliable.
When a witness identifies a photograph before he sees the person in the flesh an added risk is injected.

Even if the police follow the most correct photographic identification procedures and show pictures of a number of individuals without indicating whom they suspect, there is danger that a witness may make an incorrect identification, and there is the further danger that the witness may retain in his mind's eye the image: from the photograph rather than the image of the person that he believes he saw.

The risk of misidentification is increased still further if the witness is presented with photographs in a suggestive menner.

For example, if the police display a sicture to a witness of only single individual who generally resembles the person they saw, or if they show him the pictures of cortain persons among which the photograph of a single such individual recurs or is in some other way emphasized.

Most of the witnesses in this case who saw

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photographic spreads saw a group of photographs in which was included a single photo of one defendant. However, you will recall that when John Shaw was first shown photographs he was shown a group of photos that included only the defendants.

Defendant Coffey and the photo of Peter Betres showed him standing near a Cadillac of the type Shaw had previously associated with Peter Betres.

of course, Show in trying to identify suspects is neither a victim who might be fearful nor a bystander or a waitress or a plant employee who might have little reason to pay attention to any particular person.

shaw did have reason to take a careful lock at whoover was involved in the criminal venture with him. Hevertheless, the circumstances under which he or any other witness made a photo identification or an in-court identification ought to be carefully considered by you.

If you find that the identification procedures were unduly suggestive and that they led to a substantial risk of an incorrect courtroom identification, then you should disregard the courtroom identification.

of course, in deciding whether the courtroom identification of a witness - identification of a defendant by any vitness, including Shaw, was correct, you are entitled to consider all the other evidence in this case of that defendant.

All this is not to say that you may not believe eyewitness identification testimony, but as you decide whether to believe such testimony you must carefully weigh the witness' ability to observe, the circumstances under which the observation was made, the consistency of the identification with any other identifications in the case, the inability of other witnesses in relatively the same position to make the same identification and any inconsistencies developed in the examination and crossexamination of an identifying witness.

Some of the defendants have offered evidence to show that at a significant time they were at locations far removed from where the government contends they were seen by other witnesses.

Sometimes a defendant's evidence places himself at a location far from Shelton during the commission of the
offense, or prior to the commission of the offense at a location
so far removed from Shelton as to make it unlikely that he was
at Shelton during the commission of the offense.

Or, in the case of Moeller, his evidence places him at a location away from the plant at a time when Shaw says Reverend Bubar placed a call reporting on the time of the arson.

Each of the these defenses is called an alibi.

Now an alibi is an entirely legal and proper defense. It simply means evidence that a defendant was at a location different

SANDERS, GALE & RUSSELL Certified Ster otype Reporters from the location indicated by the government's evidence. Moreover, there is no burden upon a defendant to establish his alibi.
The burden of proof always remains on the government to establish
the defendant's guilt.

in deciding whether a reasonable doubt exists as to a defendant's guilt on each of the crimes charged. If his alibit evidence, weighed with all of the other evidence in his case, leaves you with a reasonable doubt about his guilt, then you should acquit him.

You will recall there was introduced in evidence records of long distance toll calls from and to various telephone numbers.

The actual records are in evidence. There is also a list of certain calls and a chart graphically portraying the calls on that list.

As I explained at the time this evidence was introduced, you should be careful in your consideration of such evidence. The evidence was offered to show that at various times various defendants were in telephone contact with each other.

In only a very few instances, however, was there any testimony that a particular defendant was actually on one end of the telephone conversation.

place a call from the plant, to getting a call from Just and to

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hearing Dennis Tiche's and of a conversation.

but for the most part, there is no direct evidence that a particular defendant was on the phone during most of the calls of which records are in evidence.

The government urges you to draw an inference that a particular defendant was a participant in a call from various circumstances. They rely on the fact that a number was listed to a particular defendant or that the number was one to which he had access or that it was billed to a credit card number that he used.

They also rely on the pattern of calls.

The defendants urge you not to infer that they rade the calls. In some instances, they have presented evidence that strongly refutes the inference that the government urges.

the home of Carl Just to the Alhambra Hotel. The government contends these are calls from Anthony Just to Peter Betres.

Was in contact with Peter Betres or others at the Alhambra in connection with ordering of supplies for remodeling work.

You are entitled to consider all the evidence in the case in deciding whether you choose to draw the inference that a particular defendant was a participant in a call reflected in any of the records. But don't jump to

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defendants were participants in a call, you may not speculate as to what the conversation was. Unless there is evidence of one end of the conversation from a witness, the toll records at most can be considered only to show that two people were in contact with each other at a particular time.

Now, I am going to review with you some of the evidence in this trial. In doing so, I want to caution you that you should not attach any special significance to the fact that I refer to a particular piece of evidence or fail to refer to other evidence. Nor should you conclude that I believe any evidence is true simply because I make some reference to it or that I disbelieve some evidence simply because I make no reference to it.

Don't even speculate as to what I may or may not believe in referring to this evidence or anything else I have said in this charge because the only views that matter on credibility of witnesses and weight of evidence are your views and no one else's.

Now, in referring to some of the testimony

I am not going to mention all of the factors advanced by the

government and by the defendants that hear on whether that

testimony should be believed by you or disbelieved by you.

For example, each time I refer to Shaw's

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testimony, I am not going to mention all the circumstances that tend to either corroborate or to impeach his testimony.

I simply want to summarize some of the evidence from each side that applies to each of the nine cases you are considering, to be sure you understand the claims each side is making.

Again, I remind you that your recollection of the facts controls, and if I refer to any evidence in a way that is different from your recollection, you rely on your recollection.

I'm going to do this in the order in which the defenses were presented, but don't attach any significance at all to that order.

what different from those in the cases of other defendants. His defense does not dispute that he did much of what the government contends he did except, of course, as to unloading any barrels at the plant. His defense disputes that he knew what was inside the barrels or why they were delivered to Plant 4.

Shaw testified that Connors appeared in the earlier morning hours of February 28th at the roadside and drove the Avis truck. Connors told the Grand Jury that he picked up the truck in the early morning hours and received no papers for them.

Josephine Wheaton testified that Conno.

registered at the Tremont Hotel in West Haven on the afternoon of February 28th.

Fred Windisch testified that on March 1

Conners drove the Avis truck to Plant 4 and said he had lime for water treatment.

windisch called Al Cole who sent the truck away. When the truck returned around 11, Windisch says Bubar said the truck was for him and allowed it in.

Shaw testified that during the afternoon Cennors helped unload the barrels and Shaw also testified that gasoline was observable by sight and smell leaking from one of the barrels.

knowledge of the contents of the truck. His defense points out that the truck was scaled when he picked it up, that no traces of gasoline were found in it, that Connors charged no more than a customary charge for hauling a loaded truck to Connecticut, that it would have been customary to charge more for a dangerous shipment, and that a driver would not sleep in a truck loaded with explosives as Connors did.

The defense disputes that Connors ever unloaded barrels or that leaking gasoline was observable and points out that John Shaw did not allege these details in earlier statements or Grand Jury testimony.

. With respect to Reverend Subar, there is

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testimony that he was formarly a member of the Board of Directors of Ohio Decorating and for many years was a close friend and adviser of Charles Hoeller.

Fovalaitis testified he drove Bubar with Peter Betres to the plant from LaGuardia on January 7th and from the McAlpin Fotel on February 11th.

Philip Levino testified that on February 25th Bubar ordered a quantity of line and specified that the line was to be shipped in fibre barrels which cost an extra \$60.

John Grande, a plant guard, testified that on February 28th Bubar asked him how long it takes the guards to make their rounds and also that Bubar told him he wanted a light turned off on the roof of Plant 4 that was illuminating a flag.

Povelaitis and Windish testified they saw awar around the plant 5:30 p.m. on the 28th.

Park Plans the night of Pebruary 28th. Show testified that Bubar appeared at the Derby Howard Johnson's and drove his and the Tiches to the plant, pointing out the Avis truck as the one they were interested in and gave the plant guards papers indicating Show and the Tiches were telephone workers.

Windish says that Dubar signed them in. using the name Wilhelm.

Shaw also quotes Bubar as saying that the

boiler room was to remain intact and that he was glad the barrles they were unloading were similar to other barrels he had ordered in connection with water treatment supplies.

Shaw also says Bubar showed them a place on the roof where antennae for a remote control device could be placed. Shaw also said Bubar placed a call around 2:30 p.m. advising that it would happen Saturday night instead of Sunday morning.

Shaw also says Bubar ran the operation in the third floor office and brought three men into the plant that night who were to abduct the guards.

In the trunk of the car that other evidence indicates Bubar drove to LaGuardia the night of March 1 was found a carton containing what were identified as fingerprints of John Shaw and Michael Tiche.

Lowell Powell says Bubar called him around midnight on March 1 and told him about the fire. This testimony was admitted only against Bubar.

an interview on March 2nd that he first learned of the fire between 3 and 4 a.m. on March 2nd when FBI agents woke him up in his room at the McAlpin. All of this was admitted only against Bubar.

Walter Wilhelm testified that on March 2nd
Bubar called him and asked him to say he was with Bubar at a

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plant in Connecticut doing a telephone survey. This testimony was admitted only against Bubar.

bubar.

Fragosi and Districh testified that Bubar told them he was at the plant in connection with the water treatment process. This testimony was admitted only against Bubar.

\$20,000 and a \$15,000 check from Sponge Rubber Company or Ohio Decorating. Bank employees testified that Bubar deposited the \$15,000 check on the afternoon of February 28th and cashed a check for \$10,000 before returning to Connecticut where, according to Povalaitis, he not Peter Betres.

There are in evidence checks or photos of checks from Bubar to Betres for \$3,000 and \$5,000.

Reverend Bubar's defense contends that he had nothing to do with the offenses charged.

In the interview with Agent Slifka, Bubar said he was at the plant on March 1 to receive a shipment of lime to be used in connection with a water treatment process he was developing for Spenge Rubber Company.

His defendant presented evidence that he had received a -- excuse me -- that he had reviewed a water treatment process at Custom Beverage and had asked a Washington patent lawyer to try to patent it.

His defense also suggests that he understood

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the barrels at the plant contained No. 2 Red, an artificial food and beverage coloring.

traveled to Europe to purchase No. 2 Red. His defense also contends that payments to Betres were for printing presses.

Blackshear Jamison testified that Bubar told him he was going to buy some printing presses.

adverse inference should be drawn from the prophesy he made concerning some disaster that might befall Plant 4.

many prophesies or predictions that have come true. All of the evidence concerning predictions or propesies was admitted and is to be considered only in the Bubar and Moeller cases and not in the cases of the other defendants.

His defense also points that Bernard Ricks made a prophesey about some disaster occurring at a Shelton plant.

Finally, his defendant relies on his career as on ordained minister as being inconsistent with guilt.

As to Charles Moeller, the government contends that he authorized the issuance of \$35,000 in two checks to Bubar to pay for the arson.

Moeller contends these payments had nothing to do with the areon but were actually given to Bubar in part because of his assistance and friendship over the years and

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in part because he saved Sponge Rubber about \$35,000 a year by making a helpful suggestion concerning water usage.

Moeller also contends that payments were to help Subsr develop a water treatment process that might be helpful to Sponge Rubber. Thus, the most disputed issue in the Moeller case is what was in Moeller's mind at the time he authorized these payments.

There is evidence that the checks were in two payments. The first for \$20,000 and the second for \$15,000 the day before the fire.

Jeannette Kordiak testified that Mooller told her to instruct the guards to give Eubar and whomever he brought in free access to the plant. She also testified that one reason the Dobay failes were moved was because of the prediction that something was going to happen.

She also testified that on the occasion when Dennis Tiche and Anthony Just are alleged to be visiting the plant, Moeller directed that a separate car take Richard Moeller and Leon Tallalay to Kennedy Airport.

Shaw testified that Bubar made a call from the plant on March 1 around 2:30 reporting that the event would have to be moved up from Sunday to Saturday night.

A toll call record shows that a call was placed from the plant to Ohio Decorating at 2:39. Various witnesses from Ohio Decorating said they did not receive that call.

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finally, the government relies on the financial condition of Sponge Rubber and the insurance claim as a motive.

The meeting management told him they felt Plant 4 was the cause of losses and there is considerable dispute as to exactly what was said at that meeting.

in the Moeller case.

Modeller's defense relies first of all on Modeller's own denial of any guilty knowledge. He contends that the movement of the files was not related to any concern about a disaster and that if he had thought a fire was planned he would have moved more vital files. He asserts he ordered a separate car for Richard Modeller and Tallalay to be sure they got to Kennedy Airport in time to make their overseas flight.

Moeller, his daughter and Vernon Adams all place Moeller at the farm helping with the breeding of horses at the time Shaw says Bubar called concerning scheduling of the event. Moeller's defense suggests that the calls Shaw had heard went to the men at the Holiday Inn.

avidence tends to show Sponge Rubber was actually doing better than had been planned when the company was acquired and that after expected initial losses it showed a profit in January and

Pebruary.

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As to the insurance motive, his defense contends that he would not have relied on an oral binder to cover the land and buildings if he had planned a fire and that the fire caused serious financial problems for his company. His defense also contends that he could have closed the plant or sued B. P. Goodrich.

was a deliberate arson, but contends or suggests that Bubar initiated the plan out of some misguided notion of his own or for whatever reason he may have had, rational or otherwise.

of course, there is no burden on Moeller to prove why Bubar or any other defendant may have done anything in this case. Moeller's defense also contends that he would not have used checks to funnel money to aronists and would have promptly told the FMI about the checks if he had suspected the money he was paying out might not be for bona fide purposes.

With respect to Peter Betres, Povalaitis testified that he drove him with Bubar from LaGuardia to the plant on January 7th and from the McAlpin Hotel to the plant on February 11th.

There is evidence that around February 13th

Peter Betres negotiated a check from Bubar for \$3,000 and subsequently negotiated checks from Bubar for 3,000 and 5,000. He

told the bank teller that one of these checks were related to a

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purchase of Syrian salad dressing.

Edward Fregosi testified that in the second or third week of February he saw Peter Betres under the name of Jamison with Bubar at the McAlpin Hotel.

Show testified that he saw Peter Betres in the early morning hours of February 28 th at the roadside meeting when the driver arrived to take the Avis truck.

Povalaitis testified that about 12:30 p.m. on the afternoon of the 28th he picked up Peter Betres with Bubar at the Bridgeport Railroad Station and drove them to the Derby Howard Johnson's.

on the 28th Peter Betres was at or about the Derby Howard
Johnson's, that he went to the Esyres store at 4 p.m., that he
returned to the Derby Howard Johnson's around 5:15 p.m. and that
he made or received one or more calls.

phone outside the Zayres store to the Danbury Holiday Inn.

Povalaitis testified that he drove Bubar back from New York the afternoon of the 28th to most Peter Betres at the Noward Johnson's, he saw Betres on the trestle as he turned off the highway and drove Betres with Bubar to the plant.

Chemical Bank employees testified Bubar had deposited \$15,000 check that afternoon and mashed a \$10,000 check. Shaw testified he saw Peter Botres later the night of

the 28th at LaGuardia Airport talking to Donnie Tiche.

Bank employees testified that the \$5,000 check to Peter Betres from Bubar was cashed on March 3rd but came back for lack of sufficient funds.

Butler testified that Betres made the check good and later asked if the bank had any record or photo of that check to produce if anyone should come to look at it. That last conversation was admitted only in the case of Peter Betres.

Peter Betres' defense acknowledges receiving checks from Bubar but contents that those checks had nothing to do with any criminal offense and that he had nothing to do with any criminal offense.

The \$5,000 check bears a notation on it that it is for printing equipment.

Albert Lants testified Botres told him he would got a commission if he could help sell printing presses and Betres later told him they were sold. There is testimony that Bubar used printing presses.

Betres' defense disputes that he was at the roadside meeting early on the 28th of at LaGuardia on the night of the 28th. His endense points to the photographs that show the limited visibility at the roadisde meeting place. His defense also relies on cirline schedules to show he left New York without any meeting with Shaw and the Tiches at LaGuardia.

The witness from TWA testified that the three tickets from Pittsburgh to LaGuardia on the night of the 28th, including one for J. Thomas, which Shaw said was one of the names used, were used on a flight that arrived at LaGuardia at 8:55 p.m.

The man from Connecticut Limousine said the last Limousine from New Haven to JFK left at 8 p.m.

flight on that sirplane from JPK to Pittsburgh left at 10:05. Betres' name was not listed as a passenger on the flight that evening from LaGuardia to Pittsburgh.

that he took the 8 i.m. limousine to JPK, took the 10:05 flight to Pittsburgh from Kennedy Airport. Betres' defense also contends that evidence points to Michael Pesta playing a role in the offenses charged and suggests that if funds went from Bubar to those who committed the arson, Pesta and not Betres, was the intermediary. There is evidence of a toll call record of a call from New York charged to the Custom Beverage credit card to Pesta's home at 1:07 a.m. on March 2nd and there is evidence that Pesta came to New York on March 2nd and spent part of the 6 with Bubar.

There was also testimony that Festa would have secured an interest in Custom Beverage if cash had been available for Moeller to acquire it.

with respect to Dennis Tiche, John Shaw testified that Dennis Tiche called him on February 18th and told him of the plan. He also testified that Dennis paid him a thousand dollars and gave him instructions as to proper procurement of supplies.

Shaw said he heard Donnis on the telephone on February 21 discussing the postponement of the trip.

On February 27th Shaw said he saw Dennis at Gatti Chemical taking identifying marks off dynamite.

In the early morning hours of the 28th Shaw says Dennis drove his pickup truck to the spot on the highway where the driver arrived to take the Avis truck.

Show testified that on the 28th Dennis made the trip with Show and Michael Tiche to LaGuardia and then to New May.n.

It was stipulated that Dennis registered at the Park Plaza Hotel under a falso name. Shaw places Dennis at the Derby Howard Johnson's, in the plant at the third floor office and helping to place the gasoline and dynamite the night of March 1st.

I should mention that while there was some reference in argument yesterday, there is no evidence that dynamite traces were found later at the plant.

Povalaitis testified Dennis Tiche as one of those he drove from LaGuardia to the plant on February 17th.

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Goorge McAuliffe picked Dennis' photo as the man he saw in the plant on March 1 who said he was installing telephones.

Shaw says Dennis and he burned the harrels after their return to Pennsylvania leaving only the metal rims and fasteners which were dumped.

pavid Petsinger testified that Dennis told
him after the fire that Dennis and Shaw had been involved in a
clandestine operation. He quoted Dennis as saying, "You tell the
people inside you're from the Weathermen."

One of the guards at the plant said this expression was used on the night of March 1. This testimony of Petsinger was admitted only in the case of Dennis Tiche.

Metel rims from the barrels were found on the Tiche premises.

Dennis Tiche's evidence conceded some of what the government contends but his defense disputes that he was in any way involved in any of the offenses charged.

The testimony of Charles Andrew and Loretta Marley places him in Pennsylvania on Pebruary 17th. Dennis Tiche testified he made a trip to Washington, D.C. on February 19th, returning early in the morning of February 21.

Plorence Anderson and Shirley Pobes testified that they did not see an Avis truck at Gatti Chemical Company.

Connors in his statement said a Ford Galaxie was at the roadside seeting in the early morning hours of February 28th.

Dennis Tiche testified that he did make the trip from Pittsburgh to New Haven on Pebruary 28th but that he did so at Shaw's urging on the understanding it was to see about a possible purchase of used equipment.

under a false name because they might bring girls in to the hotel rooms. He also testified that the next morning he and Hichael left New Haven by train to Greenwich because he wanted to look at a company that had won a bid on which he was competing and that he returned to LaGuardia and then to Pittsburgh. He acknowledged burning barrels, but said this occurred before March 1 after he had told Shaw he could no longer store the barrels Shaw had bought.

There was also testimony from William Hardin that Dennis had equipment worth between 150 and 200 thousand dollars.

with respect to Albert Coffey, the government contends that he rented the Avis truck at Etna, Pennsylvania. There is evidence that the truck was rented by a man who signed his name as Richard Gray on the rental contract and on the accompanying document that reflects the condition of the truck.

Reymond Gray testified that he did not sign these documents, that the driver's license number that appears on them is his. At he lost his license and that he lives at the Alhambra Hotel.

A government handwriting expert says the signature on the rental document was probably written by Coffey and that the signature on the accompanying document was written by Coffey.

Also Coffey, according to Carol Thomas, was registered at the Alhambra Hotel.

The registration card from the Holiday Inn at Danbury shows a man registered in the name of Al Baucan for three people on Pebruary 28th. There is evidence that Allan Baucan is a man whose wife left him to live with Coffey. Carel Thomas said Coffey used the name Baucan at the Alhambra. The government's handwriting expert said the Holiday Irn registration signature of Al Baucan was probably written by Coffey.

Coffey admitted to FBI Agent McMullen after his arrest that he used the name Baucan. That last evidence is admitted only in the case involving Coffey. Witnesses at the Moliday Inn say they recognize Coffey as the man who was there on the 28th and on March 1.

the Derby Howard Johnson's some "in in the late morning or midday of March 1. There is testimony that it takes about a half hour to get from the Danbury Holiday Inn to the Derby Howard Johnson's.

Shaw estimated that he got to the plant

around 12:30 p.m., so he places Coffey at the nearby Howard Johnson's somewhat before that time.

Shaw also places Coffey as one of the group that was in the third floor office of Plant 4 during the evening of March 1st and that he was one of the trio assigned the role of abducting the guards.

Shaw also said the group that left the plant that evening later met with Just and Coffey when the guards were freed, and that Coffey was in the car when the group of six returned to New York City.

Coffey's defense disputes that he was the person who signed the Avis rental documents. They point out that Ann O'Toole, the lady from the Avis office in Pennsylvania, said the man who rented the truck was 5 7 and weighed between 170 and 180.

comparison, pointing to some differences between Coffey's exemplars and the writing on the Avis documents. His defense also disputes that Coffey was at the Derby Howard Johnson's or at the plant on March 1. His defense relies on the testimony of Mary Wall, the head housekeeper from the Holiday Inn, who said she was asked to check on the occupants of room 118 around 11:10 a.m. on March 1 and saw one occupant of that room, whom the described to the FBI as being 5 foot 4 inches tail.

His defense also relies on testimony of other

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personnel at the Holiday Inn who place him there at around 11:45 and around 1:30 in the afternoon of March 1. The contention is that their testimony precludes his being at the Derby Howard Johnson's when Shaw said he was there.

the plant that evening, pointing out that Shaw told the Grand
Jury that with respect to the trio that he said included Just
and Non Betres, Shaw said at one point that he did not see the
third man at all. His defense also relies on the description
of the trio given by the abducted men which describe men taller
than Coffey is.

testimony from Povalaitis that he drove Just with Bubar and Peter Betres from the McAlpin Sotel to Plant 4 on February 11th. There is in evidence an airline ticket in the name of T. or J. Just on a flight from LaGuardia to Pittsburgh on February 11, on the same flight for which tickets were issued to Mr. and Mrs. P. Betres.

Povalaitis said he drove Just with Dennis
Tiche from LaGuardia to the plant on February 17th, although
he identified Just's brother Carl as the man named Mike he had
in mind. He had previously selected a photo of Tony Just. He
had also selected as Mike a photo of Dennis Tiche.

for a Mr. A. Just and Mr. D. Just from Pittsburgh to LaGuardia

on Pebruary 17th.

25 days of re

Shaw tostified Just called him at Gatti
Chemical on February 21 to tell him the trip might be postponed.
There are tell records of calls from Carl Just to Gatti Chemical
on February 21 and also on the 21st there are tell records of
calls to Carl Just charged to the credit card available to
David Buber.

Some evidence places Just at the Danbury Moliday Inn in February 28 and Merch 1. Kelsey O'Connor from the Moliday Inn identified him as one of the men in Room 118 and Christine Kesten picked his photo as a man who looked similar to one of the occupants as did Robert Brown. Fingerprints said to be those of Anthony Just were found on a lamp in room 118.

John Shaw places Just at the Derby Boward Johnson's on March 1 and at the plant later that evening, both in the third floor office and as one of the trio that abducted the guards. Shaw also places Just at the site where the guards were released.

A maintenanceman from the plant, Walter Pinchuk, selected a photo of Just as a man he had previously seen at the plant with Bubar. In the courtroom he pointed to Carl Just as looking similar to the man he had seen.

Anthony Just's defense presented testimony to show that he was in Greensburgh, Pennsylvania during the days of February 17 and 28th and on the sorning and early

afternoon of Saturary, Harch 1, 1975, up to about 2:30 p.m. and later.

of William Pierotti, Ed O'Bryan and William Barr place Just at the Rolling Meadows building site on that date.

with respect to February 28th, the testimony of Gary Harr, William Pierotti, Ed O'Bryan, William Barr and Francis Henry place Just at the building site on that date as well.

With respect to March 1, the testimony of Gary Harr, Billy Barr and Claude Kochinsky place Just at the building site during the morning of March 1. The testimony of Dennis and Kathy Moon and Carl Just's wife place this defendant in Carl Just's home at approximately 2:30 p.m. that same day.

The testimony of Dolores Just places him in Greensburgh up to close to nightfall, a location nearly 500 miles from Shelton.

Wis defense contends that he was not in any way involved in the offenses charged.

with respect to Ronald Betres, there is a stipulation that he was not at work on February 28th. Finger-prints said to be his were found in room 118 at the Danbury Holiday Inn and Joan Tallman, from the Holiday Inn, selected his photo as being that of a person at the Holiday Inn with Albert Coffey, although she said she was not positive.

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John Shaw places Ron Betres at the Dorby

Howard Johnson's on March 1 and in Plant 4 later that evening.

Shaw says he was one of those in the third floor office and also
one of the trio that abducted the guards.

shaw says Ron Betres left the plant with him and was part of the group of six that drove back to New York.

any way involved. His defense disputes that he was at the Holiday Inn, pointing out that no witness from the Holiday Inn identified Ron Betres in Court. His defense also points out that Joan Tallman put the age of the man she referred to as 40 to 45. His defense also disputes the validity of the fingerprint testimony. His defense also disputes John Shaw's identification of Ron Betres.

with respect to Michael Tiche, Shaw tostified that on the evening of February 27th Michael helped pump gasoline into the barrels and helped load the Avis truck. Shaw testified that Michael accompanied Shaw and Dennis Tiche on the trip from Pittsburgh to New Raven on February 28th.

registration card at the Park Plaza in New Haven under a false name. Shaw testified that Michael was at the Dorby Howard Johnson's on March 1 and went with Bubar to Plant 4.

show testified Michael helped place the gasoline and dynamite around the plane that evening. A

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found on a folded cardboard carton that was retrieved from the trunk of the car that, according to other evidence, Bubar parked at LaGuardia Airport parking lot on the evening of March 1.

any way involved.

from 5 p.m. on the 27th until the next morning. His defense points to Windish's statements to the PBI describing two of the three men at the plant as having blond and light blored hair. There is in evidence a taxicab record that shows two wen transported from the hotel to a Boward Johnson's the morning of March 1. His defense contends the fingerprint compared to that of Hichael Tiche was not in fact obtained from the cardboard carton. Pinally, his defense disputes the testimony of John Shaw.

How, again, let me caution you that in reviewing that testimony I don't mean to suggest that I believe some of it or disbelieve others, and I am not trying to suggest to you what you ought to do with respect to any of it.

Again, I should mention that since so much of that testimony that I referred to is evidence that came from John Shaw, you should bear in mind all the considerations that bear from the government's standpoint and the defendants' standpoint on whether to believe the different things that John Shaw

said.

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The fact that I repeated the testimony to you certainly does not mean that you should assume I believe it nor should it be taken as any reason that you should believe it.

The judgment about credibility are all up to you.

Now, let me make one other observation about the case. It is obviously a serious matter, involving a fire that destroyed a large factory. And it has been a long trial with a great number of witnesses. It should be obvious from all I have haid to you this morning that you should not be precipitous in any of the judgments you are now called upon to make.

the issues of guilt or innocence of each defendant according to all of the evidence in his case and according to these instructions of law. Approach that task with the care and seriousness it deserves. If you are parsuaded that a defendant's guilt on one or more counts is established beyond a reasonable doubt, then you should declare him guilty. And if you are parsuaded beyond a reasonable doubt of his guilt, then you must declare him not guilty. Do not speculate. Do not let your emotions distort your judgment.

If you conscientiously apply the law to the facts as you have found them, your verdicts will promote the cause of justice whatever those verdicts may be.

Mow, take the case with you to the jury room.

When you are there, select one of your number as the forenan or

forelady of the jury. Determine the facts on the basis of the

evidence as it has been presented to you; apply the law as I

have outlined it to you and then render your verdict fairly,

uprightly and without a scintilla of prejudice.

when you reach a verdict as to any defendant on any count, it must be unanimous. It is the duty of each juror to discuss and consider the opinions of the other jurors. Despite that, in the lest analysis, it is your individual duty to make up your own mind and to decide this case upon the basis of your own individual judgment and conscience.

along with it a copy of the indictment and exhibits, a verdict form on which you can indicate your verdicts with respect to each defendant and with respect to each count. The defendants are listed on the verdict form simply in the order that they happen to be listed in the indictment and you certainly ought not to draw any inference at all from the order in which the defendants are listed on the verdict form or on the indictment, for that matter. That just has no bearing on any issue before you.

I realize the instructions have been length.

As I said earlier, if there is some aspect of the charge that
is not clear to you that you want repeated or that you have a
specific question on which you think instruction might be useful,

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don't hesitate to submit that question. Please write it out so that I can have a chance to consider it and I will endeavor to either repeat what you might not have heard the first time or to clarify something if I think that would be useful.

can proceed to select a foreman or rorelady. I will ask you before you actually start discussing the case to wait a few moments and when the bailiff brings you all of the documents and the evidence, at that point you can begin your consideration of the case.

When you have reached your verdicts, inform the Clerk through the bailiff and then return to the countroom and announce your verdicts.

The jury may be excused.

(In the absence of the jury.)

THE COURT: Does the government have any exceptions to the charge or requests for further instructions?

HR. DORSEY: The only exception I take, if
your Honor please, is the charge that pertains to the Defendant
Connors insofar as the Court ruled out for consideration of proof
of his culpability, particularly on Counts 1 and 2, the return
of the truck to Pittsburgh, on which there is evidence, and more
specifically the return of the truck from the Alhambra Hotel to
the Astna office of the Avis truck rent a car.

I realize your Honor told me earlier, put on

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the record earlier, that it was not your intention to submit those. I feel those are proof at least of those two counts and the jury should have been permitted to consider that evidence at least in relation to the question of guilt on those two counts.

I have no other exceptions.

THE COURT: Do the defendants wish to be heard on exceptions or requests for further instruction?

MR. ZALOWITZ: May I ask one question, your Honor. On the instructions to the jury and the latter part of it, sir, are the decisions or the verdicts or judgments to be made singularly as they determine each defendant or shall it be all at one time? That is the first question I ask of the Court, and the second --

THE COURT: Are you referring to their announcements of their verdicts?

MR. EFLOWITZ: Yes, sir.

THE COURT: You asked me several days ago and I asswered it then. It is up to them. If they return with all their vardicts at one time, that's when I will receive them.

MR. ZALGWITZ: The next question I ask, sir, in view of the significance of this case, will the jury be sequestored during the deliberations?

THE COURT: Mall, if you mean in the event of consideration 6_tending beyond today?

MR. ZALOWITZ: Yos, sir.

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THE COURT: Very likely not but that's something I will take up with counsel if that problem arises this

I want to know now, are there exceptions to the charge or requests for further instruction?

MR. SAGARIN: Your Honor, when the Court was discussing the identification testimony, particularly referring to photographs, the single photograph of Peter Betres, the Court said that the photograph of a man standing near a Cadillac was shown to Shaw, a car which Shaw had previously associated with Peter Betres.

My feeling is that is misleading because it is not the car he previously associated with Peter Betres but rather a car he previously -- if that is the case, and there is some dispute as to which came first, but at least in one view of the testimony, a car which had previously been associated with a man, he later came to be Peter Betres.

You see, the distinction I think, as the Court read it, it came out that Shaw had previously said it was Peter Betres or associated that car with Peter Betres, and then was shown the photograph, but in fact that car was associated with somebody else.

The claim is that the car was associated with somebody else. So I think that the way the Court put it is misleading to the jury. I would ask that if the jury is called

back on some other reason that the Court correct that, what I think was probably an inadvertent mistake.

I don't want the jury called back solely to bring their attention to that, you know, their attention to that again.

on the suggestive identification the Court said that they should first consider if it was suggestive and then if there was an irreparable misidentification. I think that after the Braithwaite case against Manson, it's a Second Circuit case, 1120, '75, and I don't think that charge is correct and I would ask that the Court racharge the jury if they find the procedure was suggestive they should disregard the identification.

evidence it indicates that Povalaitis said he took Peter Betres to the plant January 7th and on February 11th. In fact he said he took him there on the 7th, the 11th and the 17th and I think the important contrast with that is what the Court left out in talking about Peter Betres' case, that is, Jeannette Kordiak said the the two men -- two men were at the plant on the 11th and the 17th and that those two men, one of which was described as -- one of whom she identified as Tony Just and one of whom was identified as the defendant, she said those two men were there and were the same two men who were there on the 11th and 17th.

THE Cr ': You are not saying the facts as I repoxed were inaccura. You're saying that --

MR. SAGARIN: I am saying its incompleteness readers it inaccurate. It indicates that when Povalaitis said he brought up P. Betres, what he said was he brought him up on four occasions. He said the 7th, 11th and 17th, which even the government is claiming, and the 28th, and that in contrast in discussing our case, disregarded Jeannette Kordiak in her entirety which I think is an important part of the defendant's case.

mentioned although it didn't quite put it in context of consciousness of guilt, in outlining the government's case it talked about the Syrian salad dressing. It's my view that an issue of consciousness of guilt by reason of a false statement can only arise if there is a doubt to make that statement, which is attached to some person, either to a law enforcement officer, because of a federal statute, to a grand jury or under oath or if there is an attempt to --

THE COURT: This is admissibility of evidence.

I didn't instruct them with reference to that phrase. I merely recounted it, so your point is it shouldn't be in the case at all.

MR. SAGARIN: And having been in the case, it's of no significance at all. They can't draw any inference.

THE COURT: All right.

SANDERS. GALE & RUSSELL Certified Stenotype Reporters on the motion for judgment of acquittal, I object to the consciousness avoidance charge in general. I would also specifically object to it because I don't think it conveyed to the jury adequately that mere suspicions that something illegal was going on would be insufficient to convict under the conscious avoidance theory? I know where the Court got the language and I know it's from — I guess I don't have to agree with the Bright language either, so in that respect the language didn't convey that it has to be something more substantial than knowledge of general criminal activity. I object as well.

Also when the Court was summarizing the evidence, on two occasions the Court reserved to the defendants' claim that there were omissions from Shaw's other statements with respect to the leaks and with respect to the unloading of the barrels.

Well, in addition to omissions there were defense claims that there were specific contradictory sworn statements and I think that because it was repeated twice it may have left the jury with the opinion that the only defendants claims is that Shaw never mentioned the leaks or never mentions the unloading before, when to the contrary he specifically denied, he specifically stated that Connors --

THE COURT: I didn't say these were the only contentions. If I gave every contention, we would be here for

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five days it took counsel to argue the case. I did it in about 45 minutes, which I think is a lot quicker.

MR. GOLUB: That's my main objection.

MR. CRAIG: Your Nonor, I would repeat my objection to the aiding and shetting instruction being satisfied in Counts 3 and 4 by the evidence that I made at the motion for judgment of acquittal.

the jury is waiting to begin. I want to know only what you object to in the charge and whether anything further should be said.

MR. CRAIG: I would request, since one of the major points of the Just defense is with respect to whether or not he was an abductor, with the description of the guards and the height of the abductors there was some uniformity in the descriptions and there was some reliance, and in the course of the cross-examination as to attempting to get those height estimates from the guards, I would request an additional comment that the Just defense relies upon the guards' estimates of the heights of the abductors to show that he was not one of the abductors.

foot 10 and Mr. Just being 6 1. That's a very central element in the proof I think.

I would also request the same charge that

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Mr. Sagarin did on the identification procedures and ask that if the jury finds that identification procedures were suggestive, that they disregard the subsequent identifications.

I also would request the additional charge that if the Just witnesses as to his whereabouts on February 17th and March 1st are believed, the jury must acquit Mr. Just. That was a request to charge that I made at the time those requests were made --

THE COURT: I said that in connection with an alibi, that if the alibi evidence even raised a reasonable doubt they had to acquit.

MR. CRAIG: I would request it specifically, your Honor.

Just in the charge? '

MR. CRAIG: That's correct.

THE COURT: I just can't take each rule of law and do it each time a defendant is in the case. I understand your point.

MR. CRAIG: It's a significant defense and it's the only defense of that quantity that's been presented in the case. I think he is entitled to that kind of specific instruction if you are marshaling evidence.

MR. CURTIS: My comments will be particularly directed to the marshaling of evidence. I think that it was

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necessarily selective and I think by some omissions you prejudiced Dennis Tiche significantly.

For one thing there was no mention that Jeannette Kordiak's testimony, about seeing two people on the 11th and 17th, with the small effeminate 5 foot 5, 135 pound person that could not have been Dennis Tiche and the fact the saw him both days is a significant piece of Donnis Tiche's defense.

You didn't mention, when you mentioned Petsinger's testimony, that we had pointed out that Petsinger had received over \$5,000 -- one of the things that he had received was over \$5,000 to testify in this case. There was no mention. You di mentica -- I am not saying that you were inaccurate, but in your reference to McAullife you said that Mr. McAullife picked ou, a photograph but you didn't add, and I think it would have been more complete if you had, that he did not make an in-court identification when asked to make an in-court identification.

We would also challenge -- there was no -you did my there had been no proof that dynamite residue had been found.

In the instruction I asked for yesterday -but you didn't also add that one of the significant things about Dennis Tiche's defense was that there had been no proof that the detonating cord that they had alleged to be part of a bomb had been tied in in any way to the detonating cord that Dennis Tiche had bought.

Finally, there was no mention of Dennis' statements that John Shaw had a motive to frame both -- frame him for this offense because he had been denied a partnership. One of the reasons was that he had been denied a partnership in the chemical company.

I think by leaving these things out you gave an inaccurate and incomplete picture of Dennis' defense and thereby prejudiced him.

Thank you very much.

MR. BOWMAN: The only request I have is similar to Mr. Sagarin's, and that is if the Court found a photographic procedure to be suggestive then they should disregard any subsequent identification.

The only other exception I have is to the general composition of your Honor's right to summarize the evidence.

MR. CLIFFORD: Your Honor, I want to renew the objection concerning marshaling a evidence which I made prior to the giving of that. I have complaints similar, I guess to Mr. Golub, but I won't put them on the record, but I have no further request that your Honor give any further instructions to the jury.

MR. ZALOWITZ: My final statement, your lloner, is this. When the Court did marshal the evidence, when the Court marshaled the evidence specifically with reference

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to Reverend Bubar, the Court spoke of a statement amongst two other statements that Reverend Bubar gave to Agent Slifka. The Court did not put forth the date of that statement which was March the 3rd, barely a day and a half after the alleged offense.

The Court did not state the circumstances under which that statement was adduced notwithstanding my being there.

should act with -- should have with caution stated, that it was done under complusion and not voluntarily, notwithstanding that I was there, for this reason: that Agent Slifka let it he known to Reverend Bubar, "If you are not there and there punctionally we will have the dragnet out and have you arrested immediately."

ment. I am saying further in view of the fact that the Court did exclude, even at my insistence that it be included, even at my projection of asking two witnesses of the government, Special Agent McNamara, which he said there was no meeting on March the 7th between the PBI, myself and a Connecticut State Police, and there was no testimony or no statement made that was a lie.

Number two, when the statement came forth and I endeavored to introduce a tape recording of the statement that took place on March 7th, finally Mr. Dorsey had to come forth, sir, --

THE COURT: Please. We have been all over

your claims about March 7th.

MR. ZALOWITZ: It has not been spoken to this jury. It was outside the province of the jury. The jury should be made known that fact with regard to the voluntariness of the statement of Reverend Bubar, otherwise, your Honor, you are not marshaling the evidence, you are commenting upon it.

THE COURT: All right.

Anything else? All right.

As far as the last point, Nr. Zalowitz, in the discussion of the law on accepting or rejecting confessions you will note that I specifically mentioned the March 2nd date, so there can be no ambiguity in their minds --

MR. ZALOWITZ: It was March 7th, sir.

THE COURT: I wasn't talking about the March

7th interview. I was talking about the earlier one, which is
the only one in evidence in this case.

MR. ZALOWITZ: It was Narch 3rd, sir. Here I believe --

instead of the 3rd. It's an earlier interview, which is your point. It has nothing to do with the 7th.

THE COURT: I understand what you are saying.

You have made the point and I don't need argument each time I

finish a sentence. You have made your point at length several

days ago and again now.

I am saying I am satisfied there has been adequate instruction on the standards to apply in judging the voluntariness of confessions without detailing them further.

MR. SALOWITZ: Thank you, sir. I object.

not going to instruct the jury further. The points raised about the ma he ing of the swidence I understand them.

I would be astounded if I could in any way

summariae the evidence in this case and not have some people think

I ought to have said something else or ought not to have said

something. I am a little surprised there is as little criticism

as I got. I do not invite you to reconsider but I think all

things considered the evidence was fairly put to them and

certainly counsels' extensive arguments I think more than made

up for whatever I may have omitted.

will instruct further. I understand the point about further instructions on the test as to suggestive identifications, but I think that that charge, that portion of the charge as a whole adequately puts the issues to the jury and I do understand Mr. Sagarin's point about the reference to Peter Betres. The difficulty is that if each time I talk about something I went back and said, "If you believe Shaw when he said that," it makes the explanation of the point impossible, and at that point I was

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talking to them about suggestiveness, and I think they got that point. I think I would rather lat it stand.

All things considered I will not charge further. The Clerk will take the exhibits, the verdict forms and the clean copy of the indictment to the jury room. Counsel can be excused for one hour as a lunch recess and thereafter will be available with their elients on no more than five minutes' notice in case we have to re-assemble to listen to questions or for some other reason.

(A recess was taken for lunch.)

APTERNOON SESSION,

(In the absence of the jury: 2:45.)

THE COURT: All right, gentlemen. The jury has sent some notes on some matters that -- well, I don't think one of which requires to consider anything, but I will read them all to you so you will know.

The first note reads, "Would like pads and pencils."

MR. CRAIG: I object.

MR. COLUB: I object to that, your Honor.

MR. EALOWITE: Your Honor, at government

expense?

THE COURT: Those have been supplied.

The second note apparently was sent at a time before all of the exhibits had been brought in. It reads, "We would like the following to facilitate our deliberation: graphic display of phone calls, blackboard."

Now, the -- all of the exhibits, some, apparently were a little more cumbersome than others, the large cards did not go in when the first batch of little exhibits went in. So, now, all the exhibits are there, so that's been taken care of. A blackboard will be made available.

Now, the third note reads as follows: "Do we set up our own schedule of deliberation or follow the Court's ruling on this matter? The jury has agreed to a daily deliberation

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schedule beginning at 10 a.m. and ending on 4 p.m. The times are, of course, subject to the Court's ruling."

HR. CURTIS: That's torrific.

THE COURT: Well, the last note indicas is two things: one, that they expect that their deliberations 11 carry over a day and that they will not be sequested during that time and, also, that apparently their preference is to work a somewhat normal business day rather than a late evening. Hy normal inclination in these matters is to leave scheduling to a jury, within some limits, particularly on the issue of late night work. Sometime a jury would rather work late at night, have suppor brought in, stay with it.

Other juries prefer not to. This jury has indicated that they prefer not to work at night, and I would nermally not require them to work at night. My own view is that artificial time constraints of any sort ought not to be imposed on a jury. I would be inclined to tell them that I think the normal jury working day is 10 to 5. So all I really need to know from counsel is whether you have any objection or contrary suggestion to my telling them that, first, that the scheduling is in the main up to them, that if they wished to suspend at the end of a normal working day, they may do so.

That, by "normal working day" I mean 5 o'clock. And then, if that is to be the view, I would bring them in around 5 and give them some explicit instructions concerning

the circumstances of their being disban led over an evening recess.

MR. KOSKOFF: I was wondering whether or not somebody on the jury may have some personal commitment after 4 o'clock. If so, perhaps that ought to be explored by the Court.

THE COURT: All right, I can do that if -- on a particular day. They obviously don't have a standing one because for three months they have been here until 5, but if today creates a particular 4 o'clock problem, sure, I will tell them to take that into account.

MR. DORSEY: But that may involve a transportation situation on a continuing basis, if your Honor please,
I don't know that but I know that several of them come from
considerable distances and sometimes getting bus connections after
5 o'clock can be a considerable problem.

THE COURT: No. I think Mr. Koskoff's point was that somebody may want to leave at 4 because of a particular problem today.

MR. KOSKOFF: I didn't think of the question

Mr. Dorsey raised, your Honor, but it may be that — Mr. Dorsey

points out some people are having problems getting trans
portation. From my own inclination and given preference, if I

have a preference, it would be to go along with their suggestion.

MR. CURTIS: I would second that, your Honor.

I think as it gets toward 5 o'clock you notice the jury starts
to sit a little bit further forward in their chairs and if they

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are -- they think that they can deliberate from 10 to 4 and do it well, it seems to me that it really would not serve any useful purpose to keep them the exact hour, they might -- I mean -- there might be a whole lot of reasons why several of them would, and some of them come from Waterford which is an hour away. And so, unless you have a real strong reason for keeping them until 5 o'clock, I would tend to let them go along with their own preference.

MR. CLIFFORD: Your Honor, they have obviously discounted the lunch hour, through which they are working, which means they are working solidly from 10 to 4 and that's really a long period of time. I assume that's what they have done.

THE COURT: Well, you know, it's not a wage

HR. CLIFFORD: It's 20 bucks a day. What can

MR. ZALOWITZ: Your Honor, --

MR. DORSEY: Plus lunch.

MR. CLIFFORD: Plus lunch.

MR. ZALOWITZ: As to working through the lunch hour, I'm sure it's made with much frivolity. I am concerned with, I believe, a matter of even greater significance and that is not demaning -- is significant, but I am concerned with something else.

I am concerned with the jury being placed in

and hour case.

I tell you.

a position of constrainment by having to disclose to this honored Court any personal reasons that they may want to leave earlier.

Now, I am aware that the case and everything else is within the Court's proper position, and I respect, sir, as I have always done throughout this trial, but I am saying that no one should be put in position to have to disclose a reason, a personal reason in this case, for I do recall, without enumerating and shall not, my position of constrainment, sir.

not going to require them to disclose any personal matter.

they should -- they should be free. They are still free as this land, they should be free to decide their time, so long as the time is reasonable, should not be under constrainment, even by this Court, that's number one.

your Honor, and if we were going to call it right to the point of total constrainment, that perhaps "stal constrainment would reach into the point of sequestering this jury, and I am not for that either, but I am saying --

THE COURT: Well, then, why bring it up?
MR. ZALOWITZ: Well, sir, I am bringing it up

for the reason --

THE COURT: Do you want it done?

MR. IALOWITZ: Sequestering? No, sir.

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THE COURT: All right, then, we don't have to 1 worry about that. 2 MR. IALOWITZ: But I am asking also another 3 question, sir. What if the matter reaches in, as I am certain in 4 my prophecy it will, that it will reach beyond Friday. Has there 5 been a determination as to Saturday and Sunday? I think that 6 would be contrary even to the Connecticut rules and laws of Blue Sundays. And I am saying, sir, --Q THE COURT: Lot's not worry about that. 9 MR. ZALOWITZ: It's an unreasonable infatu-10 ation of the fluidity. There should be a fluidity within the 11 Court's wisdom and, yet, not constrainment on the jury. 12 THE COURT: That's obviously not today's 13 problem. MR. ZALOWITZ: Well, it shall be, sir, because 15 it will happen. 16 THE COURT: All right. Anything else? 17 (A recess was taken.) 18 (In the absence of the jury: 3:05.) 19 THE COURT: Gentlemen, they have submitted 20 two more notes which read as follows. The first reads: 21 "Are we to report the verdicts individually 22 or all at once?" 23 The second reads: 24 "Request to hear the testimony of the three

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guards at Plant no. 4 and John Shaw's whole testimony."

I will hear counsels' suggestions but I will tell you what my inclination is as to whether they should report their verdicts individually or all at once.

I would be inclined to tell them that it would generally be preferable for them to deliver their verdicts at once. If the deliberations turn out to be protracted it might be appropriate to return verdicts against individuals but I don't think I ought to encourage them to depart from the normal return procedure.

MR. KOSKOFF: One of the problems with that is, it seems to me, there should be no prohibition once a juror has arrived at a verdict and having them report it at once. I think if it turns out that they have verdicts even at this point it's my view it's senseless to put the people whose verdicts they have, whether a good verdict or a bad one, through the continued trauma of sitting in a courtroom waiting for a verdict.

I think it's cruel to do that that way. I also think that there is just no reason to make sense not to have them report a verdict when they -- I don't see any reason in favor of it is what I am saying, not to report a verdict if they already have one.

I think I also have to add this. It's been my experience in the past, at least in one case or an observation of one case, to learn that a verdict had been arrived at very

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defendants or six in the case -- I don't suggest this jury will do it -- but in the later stages -- I don't know, the 5th or 6th day of deliberation or after that they got involved in a real contest and they went back on one of the verdicts, which happened to be a not guilty verdict. Ultimately the jury --

I'm talking about the Huggins-Seals case where
the jury had decided to let Bobby Seale go and someone of the
people that decided to let Bobby Seale go had decided -- that
particular juror wanted Erica Huggins convicted and they didn't
agree on either verdict. It was an unfair approach to it.

I don't say this jury would do that. It's not unknown that this kind of thing takes place. So, you know, my feeling is that if they have arrived at a verdict, good, bad or indifferent, they ought to be parmitted at any stage to come in with it.

I don't comment on the second one except to say that the second question, except to say your Honor must appreciate what they are asking, for here is a week's testimony and I think that's too much to ask for.

I think that if there is a specific area of Shaw's testimony, maybe you can give them that, but I think the system being what it is, the testimony having been what it is, to say they want a person's whole testimony — if it was a guy on the stand for 20 minutes, that's one thing, but a person who

has been on the stand a week, I really don't think the testimony should be reread.

MR. ZALOWITZ: Your Honor, I'm in complete divergence with that of Mr. Koskoff.

jury, my experience has been contrary to Mr. Koskoff, and my length of practice I think is almost equivalent if not surpasses the length that he has, but albeit that, to do and endeavor to have individual verdicts returned which creates such a position of confusion in this courtroom that what has taken place in the last three, three and a half months will be considered very, very mild.

I am not asking for anything which I believe in my humble judgment is not proper. I am saying and I am asserting and I believe propriety of the return of verdicts in a case that is as multiple as this one was, in which the severence by defendants was denied, within the wisdom of the Court, that it is one position even though there are individual verdicts for all the evidence was marshaled and put together firstly presented by the Honorable Mr. Dorsey and they must be returned together otherwise, sir, I am saying there is a violation of due process of law in this courtroom.

Secondly, with respect to the jury's request for John Shaw's whole testimony, to take away one iota of one word that's spoken here, whether it's spoken here or whether

it's a grand jury, with reference to John Shaw would be a complete emasculation of the rights of Reverend Bubar and I trust
understandably the emasculation of the rights of all other
defendants, and we are entitled to that due process of law and
not even as august a court as this can or shall with propriety
take it away from us.

here and clothed here right now with complete innocence until that jury returns their verdicts. To do otherwise is to say, "Well, if you are a good boy we will let you do this and if you are a bad boy, we will let you do that."

I am saying we are standing here in a court of law under this great American flag and, yeah, even with the Bible in the courtroom for truth and veracity, I am saying to do otherwise is to deny Reverend Bubar his day in court and I am saying and I assert and I am saying as strongly as I can, it should not be accomplished.

MR. CRAIG: Your Honor, I agree with

Mr. Koskoff's position as to verdicts seriatim. I would make a

suggestion to the Court with respect to the guards' testimony

and Shaw, that it's my understanding that the full transcript of

the three guards' testimony plus the cross-examination is

available and we would have no objection that that transcript be

made available to the jury in the jury room for its reading. I

think the request clearly indicates their interest in

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inconsistencies of the testimony of the guards as compared with John Shaw's testimony and I would urge the Court to send back a request from them to designate, if they can, which portions of John Shaw's testimony they would be most interested in and then if it's possible to isolate those portions of John Shaw's testimony and the relevant cross-examination, that that transcript also be sent into the jury to the extent that they can really define those elements of John Shaw's testimony that they are specifically interested in.

That's my suggestion on how to handle the second part -- the second question.

MR. BOWMAN: As far as the guards' testimony is concerned, your Honor, I agree they should have it. Whether or not it should be read or the transcript delivered to them is something I am not really sure about.

think that maybe we ought to find out whether or not the testimony that they are concerned about is only that which pertains to the defendants who are alleged to be the kidnappers. That may make our problem simpler, I feel they should be allowed to examine testimony on Shaw and the independent witnesses with respect to the kidnappers.

MR. CURTIS: I think the formulation that you suggested about the split verdicts is the proper one and I would endorse that one.

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MR. ZALOWITZ: I want to make my last comment.

THE COURT: I heard you at length, Mr. 7-lowitz.

MR. ZALOWITZ: In the future shall I keep on

speaking so I don't have a chance to rebut it?

THE COURT: You should do what you did, which is terminate, at least at the point where you have adequately made your position clear, which you had more than done.

Do other counsel wish to be heard?

Is the testimony of Shaw transcribed?

MR. CRAIG: I am not sure that all the crossexamination is. It is my understanding that the direct has been transcribed but Mr. Gale is the one who can really give you a more accurate answer.

MR. GOLUB: I don't know what Mr. Gale said about Shaw's transcript being fully transcribed. I would object to having Shaw's full transcribe or I think any part of the transcribe going into the jury room, and if that's an alternative being considered by the Court I would express opposition on behalf of Defendant Connors.

I also indicated that I concur with the position taken by Mr. Koskoff on the verdicts.

MR. NEIGHER: I concur with Mr. Craig's suggestion about the testimony of the guards, your Honor. I think an inquiry should be made of the jury as to whether or not they just want the testimony of Shaw as to the kidnappers and

then after we determine that, I think we can resolve the question of what transcript they should get, if any.

THE COURT: The testimony of the guards has been transcribed, is that correct?

MR. CRAIG: I have a fairly complete copy of all the transcript in my office of the guards.

THE COURT: The court reporter has a clean copy.

Does anyone object to the testimony of the guards that has been transcribed going to the jury?

the total position. To do that is only to try part of the case before the jury. To do that is to eliminate any position of Reverend Bubar has in this case as to the truth and veracity of John W. Shaw. That's a violation of due process of law, sir. It doesn't completely -- you told me that I /m terminated. I must make my position before I am terminated.

position. If the choice is between having the jury sit here while the testimony only of the guards is read to them or giving them that transcript, do you have a preference on that question?

MR. ZALOWITZ: Your Honor, I am saying it doesn't go far enough. My reply is not a reply to you, sir, --

THE COURT: You are going to give me a reply,
Mr. Zalowitz. I am frankly sick and tired of your constant

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MR. ZALOWITE: I am answering the question, sir.
THE COURT: You began by saying you couldn't

answer it.

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MR. ZALOWITZ: I didn't say those words, sir.

THE COURT: Do you understand the question?

MR. ZALOWITZ: Yes, I do, very clear'y.

THE COURT: Would you please answer it suc-

cinctly and promptly.

MR. ZALOWITZ: It would make no difference either way.

THE COURT: Fine.

MR. ZALOWITZ: But it doesn't go far enough as to the protection of Reverend Bubar's rights and John Shaw's testimony, and that I am asserting, sir.

just told me, that as between havi g the testimony of the guards read to them or letting them see it in typewritten form, so long as you have no preference on that narrow issue and so long as all other counsel have no objection to the transcript going in, it seems to me it will certainly save our time and the jury's time if they have the transcript to read rather than sit here and have it read to them.

As far as the Shaw testimony, it is not fully transcribed I an informed and in view of its length, I would not

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in any event have it read to them. I would invite them to focus more pointedly their inquiry, if they care to, and it may be there is some particular fact as to which counsel can agree or perhaps could limit the portion of the transcript that's responsive.

As far as the inquiry as to whether they should report verdicts individually or all at once, coursel apparently are in some disagreement. I think the law on the subject is entirely clear that a jury is permitted to return verdicts as to a defendant as they reach them.

It's been done a number of time and I know of no case that has ever suggested anything improper about it.

On reflection I think it may be advisable.

It's certainly far more consistent with what I told them several times, that they are to consider cases individually and not collectively, so that if that is something they want to do I will certainly indicate to them that they may do so.

I don't think I will require them to do it bot I think I will certainly indicate that's something they may do.

have made my ruling and I will now bring the jury back.

MR. DORSEY: Is the reference to the three guards or to two guards and Mr. DeJoy, the boiler operator?

THE COURT: It says the three guards.

I think the problem was that initially the paper exhibits but not anything on a big piece of cardboard were brought in but I understand all the exhibits are with you but that's been taken care of and a blackboard, if it hasn't already been made available will be made available to you.

The next note reads, "Do we set up our own schedule of deliberation or follow the Court's ruling on this matter? The jury has agreed to a daily deliberation schedule between at 10 a.m. and ending on 4 p.m."

The times are, of course, subject to the Court's ruling. I will respond in this fashion. I think that to a large extent the scheduling ought to be decided upon by a jury. Certainly to the extent this note indicates that you prefer to deliberate in the daytime hours and not go into evening hours, I will certainly honor that request.

I do think as a general rule the working day ought to, for the jury, begin at 10 and continue closer to 5 o'clock.

Now, if on any particular day, today or some other day, one or more of you have a particular personal matter, I don't need to know what it is, but if one of you has a particular problem that makes a 4 o'clock departure of some personal significance, I would certainly go along with that and I would assume that all of you would respect the preference of another, but unless it's something of that sort I think the hours ought to

be 10 o'clock in the morning to close to 5, so I think -- and I should point out, lest I forget, that upon your leaving at the end of the day, including today, I will require you to come back into Court so I can briefly say something to you before you depart.

reference was prompted by somebody's personal problem, then at about 10 of 4 let the bailiff know that you do wish to adjourn and he will bring you back into Court and I will speak briefly to you and discharge you. But if the 4 o'clock time had nothing to do with any particular personal problem, a previous appointment or something of that sort, then I think I will ask you to continue your deliberations until about a quarter of 5, alert the bailiff at that point that you wish to recess and again he will bring you into Court at that point.

Is that all clear? All right.

Now, the next note says, "Are we to report the verdicts individually or all at once?"

In general this, too, is up to you. I did indicate to you repeatedly and emphatically that you are to consider the cases individually, so that if as to one or more individuals you have reached verdicts, it would certainly be appropriate for you to report those verdicts in open court. You are not required to do it that way but you are certainly permitted to do it that way. So the result is that if at a particular point you have verdicts as to one or more verdicts, certainly

feel free to report those verdicts to the Court.

whole testimony."

reference to the three guards is a reference to the three men who were abducted. I say that because I think the testimony was two of them were guards and one was a boiler man and there was some testimony from someone else who was a guard but who was not abducted but when you say three guards, I assume you mean the three men abducted and by the nodding of the heads I take it I have correctly assumed that.

testimony of the three guards at Plant No. 4 and John Shaw's

The final notes say, "Request to hear the

The testimony of those three individuals, as it happens not all the testimony in the care is typed up during the trial, but sometimes for different reasons some is and some is not, as it happens their testimony is typed up and so the typed transcript of their testimony will be made available to you. So we won't have to have you sitting in the jury box having that read to you. The transcript itself will be brought into the jury room.

As to John Shaw's testimony, that has not been typed up completely. Some parts of it are. I think some parts perhaps were read to you during the summations, but all of it was -- has not been typed up.

You may recall that testimony, the direct

Examination, the cross-examination consumed the better part, as

I recall it, of five days and, frankly, in view of the length of
that I do not think it's appropriate to bring you back to the
jury box and read to you or have read to you five days' worth of
testimony.

Now, in rejecting that request, I do suggest an alternative to you. If you have an inquiry as to John Shaw's testimony or as to any testimony that could be made rather focused, if you write that inquiry out it may be that with the court reporter and counsel, we could find the particular portion of the testimony that bore on that point or it may be that there would be ready agreement as to a certain point there is no dispute as to what he said or what any witness said on a particular point.

I don't want to indicate that that is always an easy alternative because sometimes a witness touches on a point at various stages during the direct examination, during cross-examination or redirect or recross, so it doesn't always work out smoothly, but I simply suggest it to you as an alternative.

of this testimony, I will not have the reporter read back to you all of it. But if when you resume later on it does seem appropriate to you to write a very focused or pointed inquiry as to his testimony or someone else's testimony, then I will try to see if that more pointed request can be responded to. It may be I can't but at least it would be more likely that we could

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respond to a pointed inquiry than to this request for the entire transcript.

That takes care of all the communications I have at the moment. So you may resume your deliberations. Again, as to the time, if the 4 o'clock time today was set or suggested out of someone's personal convenience, I will certainly honor it and in that event let the bailiff know at 10 of 4 and he will bring you back to the Court.

If it's a question of sort of picking a daily schedule, I think 10 to shortly before 5 is reasonable and in that event let the bailiff know a quarter to 5 that you wish to recess and then he will bring you back into Court.

All right.

(The jury was excused: 3:35 p.m.)

(In the absence of the jury.)

THE COURT: The notice will be marked as the next five Court exhibits in sequence. I will request the court reporter to make available to the bailiff the testimony of what turns out to be the request, the two guards and the boiler man. I assume they are named in the indictment so there will be no ambiguity in the court reporter's mind --

MR. BOWMAN: Al Hanley, Roy Ranno and

(A recess was taken.)

(In the absence of the jury: 3:50 p.m.)

Mr. DeJoy.

1	THE COURT: They have submitted to me two
2	notes. One says:
3	"There is a special request to go home early
4	at 4 p.m., and the second says: "We have reached a decision on
5	Defendant Donald Connors."
6	(The jury present: 3:50 p.m.)
7	THE COURT: Ladies and gentlemen, I have two
8	more notes. The first says, "We have reached a decision on
9	Defendant Donald Connors," and the second says, "There is a
10	special request to go home early at 4 p.m."
11	First of all, I will ask the Foreman to give
12	his name for the record.
13	MR. JURASHCKA: Don Jurashcka.
14	THE COURT: I will ask you to submit the
15	verdict form to the bailiff.
16	THE CLERK: Ladies and gentlemen, in criminal
17	N-75-59, United States against Donald L. Connors, please listen
18	to these verdicts as I read them to you.
19	Count One, not guilty; Count Two, not guilty;
20	Count Three, not guilty; Count Four, not guilty.
21	
22	THE FOREMAN: Yes.
23	THE COURT: Is there any request of the jury with respect
24	to those verdicts?
25	MR. DORSEY: No, your Honor.

THE COURT: All right. Now with respect to your recessing. In view of the fact that there is a particular request for today, I will excuse you in just a few minutes to return at 10 o'clock tomorrow morning to resume deliberations.

check in with the Clerk's Office as you usually do, go straight to the jury room, but be sure not to resume any deliberations until all 12 of you are assembled, and obviously it will help if everyone makes a special effort to be prompt so the others are not inconvenienced, but the obvious point is that your deliberations are to occur only when all 12 are assembled as a group.

Now, with respect to your leaving at this point, I think there was an inquiry early in the trial as to whether the jury would be sequestered and I told you at that time that that was very unlikely and in fact it is not going to happen, but you obviously are sware of that practice and it sometimes does happen.

over the deliberation period, and the reason it happens
particularly in a deliberation period is to be sure that no outside influence of any sort is permitted to intrude into your
deliberations, so in letting you go home this evening I am asking
you to consider yourselves as insulated from all outside concerns
of any sort as if you were physically sequestered, as if you were

physically taken to some hotel and maintained there during the evening.

In other words, you may not, obviously, look at a newspaper account or anything of that sort, but particularly you may not discuss any aspect of your deliberations with anyone else. That means at home, over supper. Obviously someone there is going to be a little curious, what did you do today, how is it going but you have an obligation to all the parties in this case and to each of your fellow jurors to simply say, "I may not discuss it at all," and you have got to take that seriously and it is only on my reliance and your taking it seriously that I am excusing you for an overnight recessing of your deliberations.

You are the only 12 people that have any business discussing and reaching verdicts in this case and you must do that without any suggestion, hint, comment or anything of this sort, from anybody else no matter how well intentioned or innocuous it might be.

So please scrupulously turn aside any inquiry, any discussion, return tomorrow morning at 10 o'clock, wait until all of you are assembled in the jury room and then resume your deliberations.

All right, the jury is excused until 10 o'clock tomorrow. Have a pleasant evening.

(The jury was excused.)

(In the absence of the jury.)

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THE COURT: I'm going to ask you to remain a few minutes so the jury leaves without any risk of any untoward unintended encounter in the hallway, in the elevator or anything of that sort.

I have not been quite that strict during the presentation of evidence but I think during the deliberation recess we ought to be sure that the jury goes out of the building without any risk of an unintended comment or remark of any sort.

with respect to the Defendant Connors, he is discharged from the requirement of his bond and from all further custody in connection with this suit.

MR. GOLUB: Before the Court adjourns, I have a motion to make with respect to Defendant Connors' Grand Jury testimony.

counsel as part of the Jenck's Act material and when it was paraphrased for purposes of evidence in this trial, I stated and Mr. Dorsey concurred that its distribution was for the limited purposes of this trial and I would move now that the Grand Jury testimony be sealed and not further distributed.

I don't believe Mr. Dorsey has an objection to that.

MR. DORSEY: I don't know how it can be sealed.

I don't have any objection to it. I don't know how it can be sealed as such except that I presume the court reporter's copy

I will make the representation to the Court and to Mr. Golub that there will be no further dissemination of that out of my file, of course. Except, of course, if there is some effort by another jurisdiction, i.e., the State to obtain from the FBI whatever it's got. I have no control of that.

MR. GOLUB: Could the Court instruct counsel who may have copies of Grand Jury testimony to submit them to the Clerk's Office or to the Clerk or back to Mr. Dorsey as the caretaker of the Grand Jury?

THE COURT: What is the situation, are copies in the hands of counsel at the moment?

MR. GOLUB: I believe so.

copies to be returned. I'm a little unclear as to what the extent of the order about documents could be, but I think I will just leave it at the moment that Mr. Connors is requesting all counsel to return transcripts, and I don't know that any counsel is objecting to that or insisting on the right to retain it for any other purpose.

MR. SAGARIN: I don't want to return it but
I certainly agree to --

THE COURT: You don't want to return it?

MR. SAGARIN: I don't want to return it. I certainly would agree it would not be shown or distributed to

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anybody else until then -- I will return it after the use I make of it that I may need it -- I am not going to turn it over or xerox it or anything. I can't return it now.

MR. GOLUB: I have no objection to that.

That's satisfactory with Defendant Connors.

(Whereupon, Court was adjourned at 4 o'clock.)

